

**OFFICIAL CODE
OF
GEORGIA
—
ANNOTATED**



VOLUME 23

Title 31. Health

Title 32. Highways, Bridges, and Ferries

2012 Edition



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OFFICIAL CODE OF GEORGIA ANNOTATED

With Provision for Subsequent Pocket Parts

Prepared by

The Code Revision Commission
The Office of Legislative Counsel

and

The Editorial Staff of LexisNexis®



Published Under Authority of the State of Georgia

Volume 23 **2012 Edition**

Title 31. Health

Title 32. Highways, Bridges, and Ferries

Including Acts of the 2012 Session of the General Assembly of Georgia
and Annotations taken from the Georgia Reports
and the Georgia Appeals Reports

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Charlottesville, Virginia

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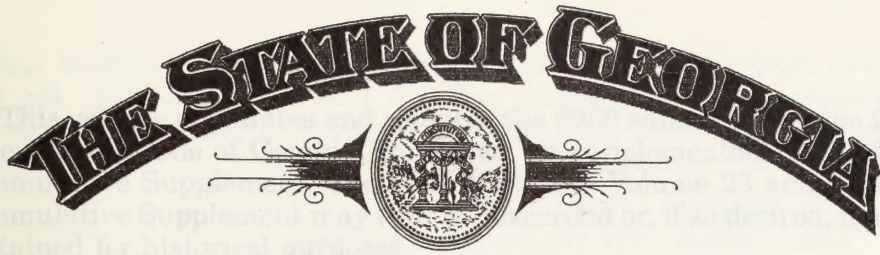
The 23 Highway Bridges and Tunnels

Included in the 2012 Edition of the Official Code of Georgia
and Annotations taken from the Georgia Reports
and the Georgia Appellate Reports

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Charlottesville, Virginia

2012



OFFICE OF SECRETARY OF STATE

I, Brian P. Kemp, Secretary of State of the State of Georgia, do hereby certify that

the statutory portion of the Official Code of Georgia Annotated contained in this volume is a true and correct copy of such material as enacted by the General Assembly of Georgia; all as same appear of file and record in this office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of my office, at the Capitol, in the City of Atlanta, this 26th day of June, in the year of our Lord Two Thousand and Twelve and of the Independence of the United States of America the Two Hundred and Thirty-Sixth.



B. P. Kemp

Brian P. Kemp, Secretary of State

Preface

This volume cumulates and replaces the 2009 edition of Volume 23 of the Official Code of Georgia Annotated, as supplemented by the 2011 Cumulative Supplement. The 2009 edition of Volume 23 and its 2011 Cumulative Supplement may thus be discarded or, if so desired, may be retained for historical purposes.

This volume contains all laws specifically codified in Titles 31 and 32 by the General Assembly through the 2012 Session. This volume also contains case annotations reflecting decisions posted to LexisNexis® through March 30, 2012. These annotations will appear in the following traditional reporter sources: Georgia Supreme Court Opinions; Georgia Appeals Court Opinions; Southeastern Reporter, Second Series; Supreme Court Reporter; Federal Reporter, Third Series; Federal Supplement, Second Series; Federal Rules Decisions; and Bankruptcy Reporter. As official and traditional citations become available, substitutions for the LexisNexis® citations will be made.

Additionally, LexisNexis® has prepared annotations and references to Attorney General Opinions, law reviews, and other research sources that we hope will be beneficial as you utilize this product. A listing of those sources is as follows: Official and Unofficial Attorney General Opinions; Opinions of the Judicial Qualifications Commission; Advisory Opinions of the State Disciplinary Board of the State Bar; Formal Advisory Opinions of the State Disciplinary Board of the State Bar, issued by the Supreme Court of Georgia; Emory Law Journal; Georgia Law Review; Georgia State University Law Review; Mercer Law Review; Georgia State Bar Journal; American Law Reports; American Jurisprudence 2d; American Jurisprudence Pleading and Practice Forms; American Jurisprudence Proof of Facts; American Jurisprudence Trials; Corpus Juris Secundum; and Uniform Laws Annotated. Also included, where appropriate, are cross references to the Official Code of Georgia Annotated.

This volume retains amendment notes and effective date notes for Acts passed during the 2010, 2011, and 2012 Sessions of the General Assembly. In order to determine the changes which were made or the effective date applied to a Code section by an Act passed prior to the 2010 Session of the General Assembly, the user should consult the Georgia Laws.

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User's Guide

In order to assist both the legal profession and the layperson in obtaining the maximum benefit from the Official Code of Georgia Annotated, a User's Guide containing comments and information on the many features found within the Code has been included in Volume 1 of the Official Code of Georgia Annotated.

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In Addition, This Publication Includes

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Law reviews. — For article, “The Aftermath of Baby Doe and the Evolution of Newborn Intensive Care,” see 25 Ga. St. U.L. Rev. 835 (2009). For article, “The Problem of Non-Identity in Valuing Newborn Human Life,” see 25 Ga. St. U.L. Rev. 865 (2009). For article, “Baby Doe: Does It Really Apply Now? Palliative Care of the Ill Neonate,” see 25 Ga. St. U.L. Rev. 901 (2009). For article, “Why the Capta’s Baby Doe Rules Should Be Rejected in Favor of the Best Interests Standard,” see 25 Ga. St. U.L. Rev. 909 (2009). For article, “Personal Reflections on Extremely Premature Newborns: Vitalism, Treatment Decisions, and Ethical Permissibility,” see 25 Ga. St. U.L. Rev. 931 (2009). For article, “Medical Futility,” see 25 Ga. St. U.L. Rev. 985 (2009). For article, “The Baby Doe Regulations and Tragic Choices at the

Bedside: Accepting the Limits of ‘Good Process,’” see 25 Ga. St. U.L. Rev. 1019 (2009). For article, “Rescuing Baby Doe,” see 25 Ga. St. U.L. Rev. 1043 (2009). For article, “Playing God with Baby Doe: Quality of Life and Unpredictable Life Standards at the Start of Life,” see 25 Ga. St. U.L. Rev. 1061 (2009). For article, “Baby Doe and Beyond: Examining the Practical and Philosophical Influences Impacting Medical Decision-Making on Behalf of Marginally-Viable Newborns,” see 25 Ga. St. U.L. Rev. 1097 (2009).

For note, “Baby Doe at Twenty-Five,” see 25 Ga. St. U.L. Rev. 801 (2009). For note, “Phase Six Pandemic: A Call to Re-Evaluate Federal Quarantine Authority Before the Next Catastrophic Outbreak,” see 44 Ga. L. Rev. 803 (2010).

JUDICIAL DECISIONS

Cited in Tuck v. State, 122 Ga. App. 649, 178 S.E.2d 305 (1970); Corp. v. Grooms, 128 Ga. App. 333, 196 S.E.2d 459 (1973).

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GENERAL PROVISIONS; ACCESS TO EYE CARE

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31-1-2.	Use of flammable materials in eyeglass frames; delivery of completed work by offices, companies, or laboratories; penalty.	31-1-9.	Breast-feeding of baby.
		31-1-10.	State health officer; duties.
		31-1-11.	No legal compulsion to participate in health care system; no legal prohibition on purchase or sale of health insurance in private health care systems.
31-1-3.	Detection of hearing impairments in infants; evaluations.		
31-1-3.1.	Reporting disabled newborn persons; referral to treatment and rehabilitative services.	31-1-12.	Hospitals to provide educational information to parents of newborns regarding pertussis disease and availability of a vaccine.
31-1-3.2.	Hearing screenings for newborns.		
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31-1-5.	Compensation of employees for damage to wearing apparel caused by patients.	Article 2 Patient Access to Eye Care	
31-1-6.	Reuse of heart pacemakers.		
31-1-7.	Marking of dentures and other	31-1-20 through 31-1-22 [Repealed].	
		31-1-23.	Blindness education, screening, and treatment program.

Cross references. — Inapplicability of implied warranties to injection, transfusion, or other transfer of blood, blood plasma, or transplanting of tissue, bones, or organs, §§ 11-2-316, 51-1-28. Examination and immunization of public school

children, §§ 20-2-770, 20-2-771. Beauty shops and cosmetologists, T. 43, C. 10. Anatomical gifts, § 44-5-140 et seq. Liability for sale of unwholesome provisions of any kind or adulterated drugs, § 51-1-23 et seq.

ARTICLE 1

GENERAL PROVISIONS

Editor's notes. — Ga. L. 1997, p. 1585, § 1 designated Code Sections 31-1-1 through 31-1-8 as Article 1.

31-1-1. Definitions.

Except as specifically provided otherwise, as used in this title, the term:

- (1) "Board" means the Board of Public Health.
- (2) "Commissioner" means the commissioner of public health.

(3) “Department” means the Department of Public Health. (Code 1981, § 31-1-1; Ga. L. 2008, p. 12, § 2-7/SB 433; Ga. L. 2009, p. 453, § 1-2/HB 228; Ga. L. 2011, p. 705, § 3-5/HB 214.)

The 2011 amendment, effective July 1, 2011, substituted “Board of Public Health” for “Board of Community Health” in paragraph (1); substituted “commissioner of public health” for “commissioner of community health” in paragraph (2); and substituted “Department of Public Health” for “Department of Community Health” in paragraph (3).

Editor’s notes. — This Code section was created as part of the Code revision and was thus enacted by Ga. L. 1981, Ex. Sess., p. 8 (Code enactment Act).

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

31-1-2. Use of flammable materials in eyeglass frames; delivery of completed work by offices, companies, or laboratories; penalty.

(a) No person shall distribute, sell, exchange, deliver, or have in his possession with intent to distribute, sell, exchange, or deliver in this state any prescription eyeglass frame or prescription sunglass frame containing any form of cellulose nitrate or other highly flammable material.

(b) Optical offices, manufacturing companies, or laboratories which prepare lenses for prescription eyeglasses or sunglasses, including industrial safety eyewear, and which perform mechanical work upon inert materials in the preparation of such eyeglasses or sunglasses shall in every case deliver the completed product of their efforts only to the physician, optometrist, or licensed dispensing optician who ordered the work performed.

(c) Any person who violates any provision of this Code section shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished as follows: the first offense shall be punished by a fine of not more than \$200.00; each subsequent offense shall be punished by a fine of not more than \$500.00. (Code 1933, §§ 92A-1901, 92A-9931, enacted by Ga. L. 1970, p. 30, §§ 1, 2; Ga. L. 1973, p. 746, § 1; Ga. L. 1974, p. 515, §§ 1, 2.)

Cross references. — Dispensing opticians, T. 43, C. 29. Optometrists, T. 43, C. 30. Physicians, § 43-34-20 et seq.

OPINIONS OF THE ATTORNEY GENERAL

Statute applies only to prescription sunglass frames. 1971 Op. Att’y Gen. No. 71-156.

Noncorrective sunglasses. — Gen-

eral Assembly did not intend that plain noncorrective sunglasses should have safety lenses. 1971 Op. Att’y Gen. No. 71-156.

RESEARCH REFERENCES

Am. Jur. 2d. — 61 Am. Jur. 2d, Physicians and Surgeons, and Other Healers, §§ 251, 252.

C.J.S. — 25 C.J.S., Customs and Usages, § 44 et seq.

31-1-3. Detection of hearing impairments in infants; evaluations.

(a) It shall be the public policy of this state that newborn infants in certain high-risk categories be evaluated for the detection of hearing impairments in order to prevent many of the consequences of these disorders.

(b) The department shall develop guidelines for evaluation and follow-up procedures for the detection of hearing impairments in infants determined by the department to be in those high-risk categories in which the likelihood of such impairments is greatest and shall develop rules and regulations to ensure that all such high-risk infants are evaluated within one year of their birth. No such evaluation shall be made as to any newborn infant if the parents or legal guardian of the child objects thereto on the grounds that such a test would conflict with their religious tenets or practices. (Code 1933, §§ 88-3301a, 88-3302a, enacted by Ga. L. 1978, p. 1726, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Health, §§ 14, 15.

31-1-3.1. Reporting disabled newborn persons; referral to treatment and rehabilitative services.

(a) It is the intent of the General Assembly to ensure the registration by the department of disabled newborn persons in order that all such persons might obtain referral and other services provided by existing state agencies, departments, other organizations, and individuals.

(b) As used in this Code section, the term “disabled newborn person” means a person less than 12 months old who is deaf, blind, or has a serious congenital defect as defined by the department.

(c) Except as otherwise provided, every public and private health and social agency and every physician authorized to practice medicine in this state shall report to the department the name of any person such agency or physician has identified as being a disabled newborn person. The report shall be made within 48 hours after identification of that person and shall contain the name, age, address, type and extent of disability, social security number, if any, and such other information concerning that person as the department may require.

(d) The department shall establish procedures whereby a disabled newborn person for whom a report is made under this Code section shall be referred with informed consent to appropriate public or private departments or agencies for treatment and rehabilitative services.

(e) The department shall:

(1) Maintain records of reports, notifications, and referrals made under this article; and

(2) Maintain and update rosters of public and private departments or agencies which provide services to persons who have disabilities like those of disabled newborn persons and send copies of such rosters and an annual update thereof to each county board of health for those boards of health to make such rosters available to the public.

(f) Statistical information collected under this Code section shall be available to any other federal or state agency or private organization concerned with disabilities of newborn persons, but no names or addresses will be provided without the consent of the immediate family or guardian of the disabled newborn person.

(g) Any person or entity with whom the department enters into a contract after June 30, 1987, for services shall, as a condition of that contract, register with the department (formerly the Division of Public Health of the Department of Community Health) the various services that person or entity is capable of or is already providing to disabled newborn persons and persons having disabilities like those of disabled newborn persons for purposes of the roster of services the department maintains under paragraph (2) of subsection (e) of this Code section.

(h) A person or entity which in good faith makes a report required by subsection (c) of this Code section shall be immune from civil and criminal liability therefor. (Code 1981, § 31-1-3.1, enacted by Ga. L. 1987, p. 393, § 1; Ga. L. 1989, p. 14, § 31; Ga. L. 1995, p. 1302, §§ 13, 14; Ga. L. 1997, p. 1585, § 2; Ga. L. 2011, p. 705, § 5-9/HB 214.)

The 2011 amendment, effective July 1, 2011, deleted “Division of Public Health of the” preceding “department” in the introductory paragraph of subsection (e); in subsection (g), inserted “department (formerly the” and inserted “of the Depart-

ment of Community Health)” near the middle, and substituted “department” for “division” near the end.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

RESEARCH REFERENCES

Am. Jur. Proof of Facts. — Extent of Disability Under Social Security Act, 46 POF2d 97.

31-1-3.2. Hearing screenings for newborns.

(a) The General Assembly finds, determines, and declares:

(1) That hearing loss occurs in newborn infants more frequently than any other health condition for which newborn infant screening is required;

(2) That 80 percent of the language ability of a child is established by the time the child is 18 months of age and that hearing is vitally important to the healthy development of such language skills;

(3) That early detection of hearing loss in a child and early intervention and treatment has been demonstrated to be highly effective in facilitating a child's healthy development in a manner consistent with the child's age and cognitive ability;

(4) That children with hearing loss who do not receive such early intervention and treatment frequently require special educational services and that such services are publicly funded for the vast majority of children with hearing needs in the state;

(5) That appropriate testing and identification of newborn infants with hearing loss will facilitate early intervention and treatment and may therefore serve the public purposes of promoting the healthy development of children and reducing public expenditure;

(6) The American Academy of Pediatrics, the American Speech-Language-Hearing Association, the American Academy of Audiology, and the American Academy of Otolaryngology, Head and Neck Surgery have recently endorsed the implementation of universal newborn hearing screenings and recommended that such screenings be performed in all birthing hospitals and coordinated by state departments of public health; and

(7) That consumers should be entitled to know whether the hospital at which they choose to deliver their infant provides newborn hearing screening.

(b) As used in this Code section, the term "newborn infant" means an infant after delivery but before discharge from the hospital.

(c) For reasons specified in subsection (a) of this Code section, the General Assembly determines that it would be beneficial and in the best interests of the development of the children of the state that newborn infants' hearing be screened.

(d) Reserved.

(e) It is the intent of the General Assembly that, by July 1, 2002, newborn hearing screening be conducted on no fewer than 95 percent of

all newborn infants born in hospitals in this state, using procedures established by rule and regulation of the Board of Public Health after review of any recommendations of the advisory committee on hearing in newborn infants, created in former subsection (d) of this Code section. Toward that end, on and after July 1, 2001, every licensed or certified hospital and physician shall educate the parents of newborn infants born in such hospitals of the importance of screening the hearing of newborn infants and follow-up care. Education shall not be considered a substitute for the hearing screening described in this subsection. Every licensed or permitted hospital shall report annually to the Department of Public Health concerning the following:

- (1) The number of newborn infants born in the hospital;
- (2) The number of newborn infants screened;
- (3) The number of newborn infants who passed the screening, if administered; and
- (4) The number of newborn infants who did not pass the screening, if administered.
- (f) Reserved.
- (g) Reserved.
- (h) Reserved.

(i) A physician, registered professional nurse, including a certified nurse midwife, or other health professional attending a birth outside a hospital or institution shall provide information, as established by the department, to parents regarding places where the parents may have their infants' screening and the importance of such screening.

(j) The department shall encourage the cooperation of local health departments, health care clinics, school districts, health care providers, and any other appropriate resources to promote the screening of newborn infants' hearing and early identification and intervention for those determined to have hearing loss for those infants born outside a hospital or institution. (Code 1981, § 31-1-3.2, enacted by Ga. L. 1999, p. 266, § 1; Ga. L. 2009, p. 453, §§ 1-4, 1-5/HB 228; Ga. L. 2011, p. 705, §§ 6-3, 6-4/HB 214; Ga. L. 2012, p. 775, § 31/HB 942.)

The 2011 amendment, effective July 1, 2011, substituted "Department of Public Health" for "Department of Community Health" near the end of the introductory language of subsection (e), and in the last sentence of subsection (h); and substituted "Board of Public Health" for "Board of Community Health" in the first sentence of subsection (e).

The 2012 amendment, effective May 1, 2012, part of an Act to revise, modernize, and correct the Code, deleted subsections (f) through (h), relating to various studies and reports by the advisory committee on hearing in newborn infants, which was repealed effective July 1, 2005.

Cross references. — Hearing handicap, T. 30, C. 1. Rights of persons with

visual disabilities and deaf persons, T. 30, C. 4.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2000, “, 2001” was substituted for “of the first year following the year this Code section first becomes effective” in subsections (e) and (f), respectively; and “, 2002” was substituted for “of the second year following the year this Code section first becomes effective” in subsections (e) and (h).

Pursuant to Code Section 28-9-5, in 2009, “former” was inserted preceding “subsection (d)” in subsection (e).

Editor’s notes. — Ga. L. 1999, p. 266, § 1 provided for the repeal of former subsection (d), effective July 1, 2005.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

31-1-4. Penalties for false representation, impersonation.

(a) Any person who shall make, utter, execute, or submit to the department or to any county board of health any oral or written representation, knowing the same to be false, for the purpose of obtaining anything of value, including any service, shall be guilty of a misdemeanor.

(b) Any person who shall impersonate or otherwise falsely hold himself out to any other person as an agent of the department or of any county board of health shall be guilty of a misdemeanor. (Ga. L. 1950, p. 222, §§ 1, 2; Code 1933, §§ 88-9901, 88-9902, enacted by Ga. L. 1964, p. 499, § 1.)

Cross references. — Impersonating public officers or employees generally, § 16-10-23.

JUDICIAL DECISIONS

Cited in *Abel v. State*, 190 Ga. 651, 10 S.E.2d 198 (1940).

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Health, § 21.

31-1-5. Compensation of employees for damage to wearing apparel caused by patients.

(a) As used in this Code section, the term “wearing apparel” includes eyeglasses, hearing aids, clothing, and similar items worn on the person of the employee.

(b) When action by a patient in one of the institutions operated by the department results in damage to an item of wearing apparel of an employee of the institution, the department shall compensate the employee for the loss in the amount of either the repair cost or the

replacement value or the cost of the item of wearing apparel, whichever is less. Such losses shall be compensated only in accordance with procedures to be established by the department, and no compensation shall be made by the department in excess of \$500.00 per claim. (Code 1933, § 88-2411, enacted by Ga. L. 1981, p. 854, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 287.

C.J.S. — 67 C.J.S., Officers and Public Employees, § 279 et seq.

31-1-6. Reuse of heart pacemakers.

(a) As used in this Code section, the term:

(1) "Heart pacemaker" means any electrical device which stimulates the heart muscle so that it contracts at a certain or regular rate.

(2) "Medically acceptable" means conforming to prevailing medical standards of cleanliness and manufacturers' applicable standards for functional operation.

(3) "Person" includes the following:

(A) Any hospital, surgeon, or physician;

(B) Any accredited medical school, college, or university;

(C) Any licensed, accredited, or approved bank or storage facility of human bodies or parts; or

(D) Any specified individual needing implantation of a heart pacemaker.

(b) Any person, as defined in subsection (a) of this Code section, shall be authorized to receive and reuse a heart pacemaker, provided that such device is medically acceptable for its proposed reuse.

(c) This Code section shall not apply to the receipt and reuse of a nuclear-powered pacemaker. (Code 1981, § 31-1-6, enacted by Ga. L. 1984, p. 1034, § 1.)

Cross references. — Anatomical gifts, § 44-5-140 et seq. Disposition of heart pacemakers, § 53-4-73.

31-1-7. Marking of dentures and other removable dental prostheses for identification.

(a) Every complete upper and lower denture and removable permanent partial denture fabricated by a dentist licensed in Georgia shall be marked with the name or social security number of the patient for

whom it is intended. The marking shall be done during fabrication and shall be permanent, legible, and cosmetically acceptable. The exact location of the marking and the methods used to apply or implant it shall be determined by the dentist.

(b) If, in the professional judgment of the dentist, this marking is not practicable, the marking shall be as follows:

(1) The initials of the patient may be shown if the use of the full name or social security number is impossible; or

(2) The marking may be omitted entirely if none of the markings so specified are practical or clinically safe.

(c) Any removable dental prosthesis in existence prior to July 1, 1988, shall be marked in accordance with this Code section at the time of any subsequent rebasing.

(d) It shall be the duty of the Georgia Board of Dentistry to notify each person licensed to practice dentistry in this state of the requirements of this Code section. Such notification shall be mailed to the address of record of each person licensed to practice dentistry in this state. (Code 1981, § 31-1-7, enacted by Ga. L. 1988, p. 742, § 1; Ga. L. 1991, p. 600, §§ 1, 2.)

31-1-8. Notice of proposed special facility.

(a) For the purposes of this Code section, the term "special facility" means any of the following facilities:

(1) A facility utilized for the diagnosis, care, treatment, or hospitalization of persons who are alcoholics, drug dependent individuals, or drug users as defined in paragraph (11) of Code Section 37-7-1; or

(2) A facility operated by the Department of Human Services and used for the treatment and residence of delinquent children, provided such facility affords secure custody.

(b) At least 30 days prior to the expenditure of state funds for any new or additional special facility by the Department of Behavioral Health and Developmental Disabilities or the Department of Human Services or an agency or board of health contracting with the Department of Behavioral Health and Developmental Disabilities or the Department of Human Services, such department or such agency or board shall notify the governing authority of the county and any municipality wherein the special facility is to be located and each member of the General Assembly whose Senate or House district includes any part of the property upon which the facility is to be located. Such notification shall include a description of the proposed special facility, including its proposed location, the category of patients or

persons to be confined therein, and the maximum number of patients or persons to be so confined. The Department of Behavioral Health and Developmental Disabilities or the Department of Human Services shall include such requirements in all departmental contracts entered into with such boards or agencies. (Code 1981, § 31-1-8, enacted by Ga. L. 1992, p. 2120, § 1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2009, in paragraph (a)(2), “Department of Human Services” was substituted for “department”, and, in subsection (b), “Department of Behavioral Health and Developmental

Disabilities or the Department of Human Services” was substituted for “Department of Human Resources” three times, and “such department” was substituted for “the department” in the first sentence.

31-1-9. Breast-feeding of baby.

The breast-feeding of a baby is an important and basic act of nurture which should be encouraged in the interests of maternal and child health. A mother may breast-feed her baby in any location where the mother and baby are otherwise authorized to be. (Code 1981, § 31-1-9, enacted by Ga. L. 1999, p. 464, § 1; Ga. L. 2002, p. 1139, § 1.)

Cross references. — Newborn Baby and Mother Protection Act, § 33-24-58. Employer obligation to provide time for women to express breast milk for infant child, § 34-1-6.

Law reviews. — For note on the 2002 amendment of this Code section, see 19 Ga. St. U.L. Rev. 209 (2002).

31-1-10. State health officer; duties.

(a) The position of state health officer is created. The Governor may appoint the commissioner of public health to serve simultaneously as the state health officer or may appoint another individual to serve as state health officer. Such officer shall serve at the pleasure of the Governor.

(b) The state health officer shall perform such health emergency preparedness and response duties as assigned by the Governor. (Code 1981, § 31-1-10, enacted by Ga. L. 2009, p. 453, § 1-3/HB 228; Ga. L. 2011, p. 705, § 3-6/HB 214.)

The 2011 amendment, effective July 1, 2011, substituted the present provisions of subsection (a) for the former provisions, which read: “The position of State Health Officer is created. The commissioner of community health or the director of the Division of Public Health of the Department of Community Health shall

be the State Health Officer, as designated by the Governor.”; and substituted “state health officer” for “State Health Officer” in subsection (b).

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

31-1-11. No legal compulsion to participate in health care system; no legal prohibition on purchase or sale of health insurance in private health care systems.

(a) As used in this Code section, the term:

(1) "Compel" includes penalties or fines.

(2) "Direct payment" or "pay directly" means payment for lawful health care services without a public or private third party, not including an employer, paying for any portion of the service.

(3) "Health care system" means any public or private entity whose function or purpose is the management of, processing of, enrollment of individuals for, or payment for, in full or in part, health care services or health care data or health care information for its participants.

(4) "Lawful health care services" means any health related service or treatment to the extent that the service or treatment is permitted or not prohibited by law or regulation that may be provided by persons or businesses otherwise permitted to offer such services.

(5) "Penalties or fines" means any civil or criminal penalty or fine, tax, salary or wage withholding or surcharge, or any named fee with a similar effect established by law or rule by a government established, created, or controlled agency that is used to punish or discourage the exercise of rights protected under this Code section.

(b) To preserve the freedom of citizens of this state to provide for their health care:

(1) No law or rule or regulation shall compel, directly or indirectly, any person, employer, or health care provider to participate in any health care system; and

(2) A person or employer may pay directly for lawful health care services and shall not be required to pay penalties or fines for paying directly for lawful health care services. A health care provider may accept direct payment for lawful health care services and shall not be required to pay penalties or fines for accepting direct payment from a person or employer for lawful health care services.

(c) Subject to reasonable and necessary rules and regulations that do not substantially limit a person's options, the purchase or sale of health insurance in private health care systems shall not be prohibited by law or by rule or regulation.

(d) This Code section shall not:

(1) Affect which health care services a health care provider or hospital is required to perform or provide;

- (2) Affect which health care services are permitted by law;
- (3) Prohibit care provided pursuant to any statutes enacted by the General Assembly relating to workers' compensation;
- (4) Prohibit the imposition by the General Assembly of conditions and limitations on the use or applicability of exemptions and deductions with regard to income taxation;
- (5) Affect laws or rules in effect as of January 1, 2009; or
- (6) Affect the terms or conditions of any health care system to the extent that those terms and conditions do not have the effect of punishing a person or employer for paying directly for lawful health care services or a health care provider or hospital for accepting direct payment from a person or employer for lawful health care services. (Code 1981, § 31-1-11, enacted by Ga. L. 2010, p. 755, § 1/SB 411.)

Effective date. — This Code section became effective July 1, 2010.

31-1-12. Hospitals to provide educational information to parents of newborns regarding pertussis disease and availability of a vaccine.

(a) During the postpartum period and prior to discharge, each hospital shall provide parents of newborns educational information on pertussis disease and the availability of a vaccine to protect against such disease. Such educational information shall include, but not be limited to, information on the recommendation by the federal Centers for Disease Control and Prevention that parents of newborns receive the vaccination during the postpartum period to protect the newborns from the transmission of pertussis.

(b) Nothing in this Code section shall be construed to require any hospital to provide or pay for any vaccination against pertussis. (Code 1981, § 31-1-12, enacted by Ga. L. 2011, p. 704, § 1/HB 249.)

Effective date. — This Code section became effective July 1, 2011.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2011, Code Section 31-1-12, as enacted by Ga. L. 2011, p. 705, § 2-1, was redesignated as Code Section 31-1-13.

Law reviews. — For article on the 2011 enactment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011). For article, "Health: Department of Public Health," see 28 Ga. St. U.L. Rev. 147 (2011).

31-1-13. Hemophilia Advisory Board.

(a) The commissioner of public health in conjunction with the commissioner of community health shall establish an independent advisory board known as the Hemophilia Advisory Board.

(b)(1) The following persons shall serve as nonvoting members of the Hemophilia Advisory Board:

(A) The commissioner of public health or a designee; and

(B) The commissioner of community health or a designee.

(2) The following voting members shall be appointed by the commissioner of public health, in consultation with the commissioner of community health, and shall serve a three-year term:

(A) One member who is a board certified physician licensed, practicing, and currently treating individuals with hemophilia and other bleeding disorders and who specializes in the treatment of these individuals;

(B) One member who is a nurse licensed, practicing, and currently treating individuals with hemophilia and other bleeding disorders;

(C) One member who is a social worker licensed, practicing, and currently treating individuals with hemophilia and other bleeding disorders;

(D) One member who is a representative of a federally funded hemophilia treatment center in this state;

(E) One member who is a representative of a nonprofit organization that has, as its primary purpose, the provision of services to the population of this state with hemophilia and other bleeding disorders;

(F) One member who is a person who has hemophilia;

(G) One member who is a caregiver of a person who has hemophilia; and

(H) One member who is a person who has a bleeding disorder other than hemophilia or who is a caregiver of a person who has a bleeding disorder other than hemophilia.

(3) The Hemophilia Advisory Board may also have up to five additional nonvoting members as determined appropriate by the commissioner and the commissioner of community health. These nonvoting members may be persons with, or caregivers of a person with, hemophilia or other bleeding disorder or persons experienced in the diagnosis, treatment, care, and support of individuals with hemophilia or other bleeding disorders.

(c)(1) Board members shall elect from among the voting board members a presiding officer. The presiding officer retains all voting rights.

(2) A majority of the members shall constitute a quorum at any meeting held by the Hemophilia Advisory Board.

(3) If there is a vacancy on the Hemophilia Advisory Board, such position shall be filled in the same manner as the original appointment.

(4) Members of the Hemophilia Advisory Board shall receive no compensation for service on the Hemophilia Advisory Board.

(d) The Hemophilia Advisory Board shall meet at least quarterly and at the call of the commissioner, the commissioner of community health, or the presiding officer and follow all policies and procedures of Chapter 14 of Title 50, relating to open and public meetings.

(e) The department shall provide reasonably necessary administrative support for Hemophilia Advisory Board activities.

(f) The Hemophilia Advisory Board shall review and make recommendations to the commissioner and the commissioner of community health with regard to issues that affect the health and wellness of persons living with hemophilia and other bleeding disorders, including, but not limited to, the following:

(1) Proposed legislative or administrative changes to policies and programs that are integral to the health and wellness of individuals with hemophilia and other bleeding disorders;

(2) Standards of care and treatment for persons living with hemophilia and other bleeding disorders, taking into consideration the federal and state standards of care guidelines developed by state and national organizations, including, but not limited to, the Medical and Scientific Advisory Council of the National Hemophilia Foundation;

(3) The development of community based initiatives to increase awareness of care and treatment for persons living with hemophilia and other bleeding disorders; and

(4) The coordination of public and private support networking systems.

(g) The Hemophilia Advisory Board shall, no later than January 1, 2012, and annually thereafter, submit to the Governor and the General Assembly a report of its findings and recommendations. Annually thereafter, the commissioner of public health, in consultation with the commissioner of community health, shall report to the Governor and the General Assembly on the status of implementing the recommendations as proposed by the Hemophilia Advisory Board. The reports shall be made public and shall be subject to public review and comment. (Code 1981, § 31-1-13, enacted by Ga. L. 2011, p. 705, § 2-1/HB 214.)

Effective date. — This Code section became effective July 1, 2011.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2011, Code Section 31-1-12, as enacted by Ga. L. 2011, p. 705, § 2-1, was redesignated as Code Section 31-1-13.

Pursuant to Code Section 28-9-5, in 2011, “January 1, 2012” was substituted for “six months after the effective date of this Code section” in subsection (g).

Editor’s notes. — Ga. L. 2011, p. 705, § 1-1/HB 214, not codified by the General Assembly, provides that: “Parts I and II of this Act shall be known and may be cited as the ‘Hemophilia Advisory Board Act.’”

Ga. L. 2011, p. 705, § 1-2/HB 214, not codified by the General Assembly, provides that: “The General Assembly finds that hemophilia and other bleeding disorders are devastating health conditions that can cause serious financial, social,

and emotional hardships for patients and their families. Hemophilia and other bleeding disorders are incurable, so appropriate lifetime care and treatment are necessities for maintaining optimum health. Advancements in drug therapies are allowing individuals greater latitude in managing their conditions, fostering independence, and minimizing chronic complications. As a result, individuals are living longer and are healthier and more productive. However, the rarity of these disorders coupled with the delicate processes of producing clotting factor concentrates makes treating these disorders extremely costly. It is the intent of the General Assembly to establish an advisory board to provide expert advice to the state on health and insurance policies, plans, and programs that impact individuals with hemophilia and other bleeding disorders.”

ARTICLE 2

PATIENT ACCESS TO EYE CARE

31-1-20 through 31-1-22.

Reserved. Repealed by Ga. L. 2005, p. 692, § 1/SB 81, effective July 1, 2005.

Editor’s notes. — These Code sections were based on Ga. L. 1997, p. 1585, § 3; Ga. L. 1998, p. 128, § 31.

31-1-23. Blindness education, screening, and treatment program.

(a)(1) Subject to availability of funds voluntarily donated and transmitted to the department for such purposes pursuant to subsection (e) of Code Section 40-5-25, the department shall develop a blindness education, screening, and treatment program to provide blindness prevention education and to provide screening and treatment for residents who do not have adequate coverage for such services under a health benefit plan.

(2) Funds voluntarily donated and transmitted to the department pursuant to subsection (e) of Code Section 40-5-25 shall be expended only for purposes of the program provided by this Code section.

(b) The program shall provide for:

- (1) Public education about blindness and other eye conditions;
- (2) Screenings and eye examinations to identify conditions that may cause blindness; and
- (3) Treatment procedures necessary to prevent blindness.

(c) The department may contract for program development with any department approved nonprofit organization dealing with regional and community blindness education, eye donor, and vision treatment services.

(d) The department by regulation shall prescribe eligibility requirements for the program. (Code 1981, § 31-1-23, enacted by Ga. L. 1999, p. 537, § 1.)

Cross references. — Funds for operation of schools for deaf and blind persons, § 20-2-302. Georgia Industries for the Blind, T. 30, C. 2. Aid to the blind, § 49-4-50 et seq.

CHAPTER 2

DEPARTMENT OF COMMUNITY HEALTH

Sec.		Sec.	
31-2-1.	Legislative intent; grant of authority.	31-2-8.	Actions against certain applicants or licensees.
31-2-2.	Definitions.	31-2-9.	Records check requirement for certain facilities; definitions; use of information gathered in investigation; penalties for unauthorized release or disclosure; rules and regulations.
31-2-3.	Board of Community Health reconstituted; powers, functions, and duties; terms of board members; vacancies; removal; chairperson; expenses.	31-2-10.	Information and comparisons regarding state-wide cost and quality of health care.
31-2-4.	Department's powers, duties, functions, and responsibilities; divisions; directors; contracts for health benefits.	31-2-11.	Biopharmaceuticals; expedited review for Georgia based companies.
31-2-5.	Transfer of personnel and functions; conforming to federal standards of personnel administration; existing procedures, regulations, and agreements; rules adoption and implementation.	31-2-12.	Redesignated.
31-2-6.	Commissioner of community health created; creation of divisions; allocation of functions.	31-2-13.	Redesignated.
31-2-7.	Rules and regulations; variances and waivers to rules and regulations establishing licensure standards for facilities; exemption of classes of facilities from regulation.	31-2-14.	Redesignated.
		31-2-15.	Redesignated.
		31-2-16.	Redesignated.
		31-2-17.	Redesignated.
		31-2-17.1.	Redesignated.
		31-2-18.	Redesignated.
		31-2-19.	Advisory Council for Public Health; members; meetings [Repealed].
		31-2-20.	Public Health Commission; members; purpose; authority [Repealed].

Editor's notes. — Ga. L. 2009, p. 453, § 1-1/HB 228, effective July 1, 2009, redesignated former Chapter 5A of Title 31 as present Chapter 2 of Title 31 and combined it with former Chapter 2 of Title 31.

Administrative rules and regulations. — Enforcement of licensing requirements, Official Compilation of the

Rules and Regulations of the State of Georgia, Department of Community Health, Healthcare Facility Regulation, Chapter 111-8-25.

Personal care homes, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Community Health, Healthcare Facility Regulation, Chapter 111-8-62.

JUDICIAL DECISIONS

Cited in *Porubiansky v. Emory Univ.*, 156 Ga. App. 602, 275 S.E.2d 163 (1980).

RESEARCH REFERENCES

ALR. — Liability of governmental agency for emergency medical or surgical services rendered to poor person without its express authority, 30 ALR 900.

31-2-1. Legislative intent; grant of authority.

Given the growing concern and complexities of health issues in this state, it is the intent of the General Assembly to create a Department of Community Health dedicated to health issues. Illustrating, without limiting, the foregoing grant of authority, the department is empowered to:

(1) Serve as the lead planning agency for all health issues in the state to remedy the current situation wherein the responsibility for health care policy, purchasing, planning, and regulation is spread among many different agencies;

(2) Permit the state to maximize its purchasing power and to administer its operations in a manner so as to receive the maximum amount of federal financial participation available in expenditures of the department;

(3) Minimize duplication and maximize administrative efficiency in the state's health care systems by removing overlapping functions and streamlining uncoordinated programs;

(4) Allow the state to develop a better health care infrastructure that is more responsive to the consumers it serves while improving access to and coverage for health care;

(5) Focus more attention and departmental procedures on the issue of wellness, including diet, exercise, and personal responsibility;

(6) Enter into or upon public or private property at reasonable times for the purpose of inspecting same to determine the presence of conditions deleterious to health or to determine compliance with applicable laws and rules, regulations, and standards thereunder; and

(7) Promulgate and enforce rules and regulations for the licensing of medical facilities wherein abortion procedures under subsections (b) and (c) of Code Section 16-12-141 are to be performed. (Code 1981, § 31-5A-1, enacted by Ga. L. 1999, p. 296, § 1; Code 1981, § 31-2-1, as redesignated by Ga. L. 2009, p. 453, § 1-1/HB 228; Ga. L. 2011, p. 705, § 4-1/HB 214.)

The 2011 amendment, effective July 1, 2011, deleted the former second sentence of the introductory paragraph, which read: "The Department of Community Health shall safeguard and promote the health of the people of this state and is

empowered to employ all legal means appropriate to that end.”; deleted paragraphs (6) through (15), relating to powers and duties of the Department of Community Health; redesignated former paragraphs (16) and (17) as paragraphs (6) and (7), respectively; in paragraph (6), deleted “disease and” following “presence of”, substituted “applicable laws” for “health laws”, and added “and” at the end; substituted a period for “and, further, to disseminate and distribute educational information and medical supplies and treatment in order to prevent unwanted pregnancy; and” at the end of paragraph (7); and deleted paragraph (18), relating to fee schedules for laboratory services.

Editor’s notes. — The substance of the

former Code section, pertaining to duty, functions, and powers of the former Department of Human Resources is now contained in the introductory language and paragraphs (6) through (18) of the present Code section. The former Code section was based on Code 1933, § 88-108, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1971, p. 669, § 1; Ga. L. 1973, p. 635, § 2; Ga. L. 1979, p. 823, §§ 1, 2, and was repealed by Ga. L. 2009, p. 453, § 1-1/HB 228, effective July 1, 2009.

Law reviews. — For article, “Putting the Community Back into the ‘Community Benefit’ Standard,” see 44 Ga. L. Rev. 375 (2010). For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

JUDICIAL DECISIONS

Editor’s notes. — In light of the similarity of the statutory provisions, decisions under former Code Section 31-2-1, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section.

No private right of action for failing to notify of sickle cell disease. — Trial court properly granted the motion to dismiss or the motion for summary judgment filed by various defendants in a suit brought by plaintiff child, by and through the child’s parent, which asserted negligence and negligence per se for failing to inform the plaintiff and the parent, at the time of the plaintiff’s birth, that the plaintiff had sickle cell disease. The trial court properly ruled that no private right of

action exists for a violation of O.C.G.A. § 31-12-7, and the appellate court clarified that there existed no statutory intent to impose strict liability for violating the notice requirement of § 31-12-7 and substantial compliance with the statute was all that was required, which was shown in that the defendants attempted to contact the plaintiff and the parent but were unable to locate them due to incorrect contact information. *In re Carter*, 288 Ga. App. 276, 653 S.E.2d 860 (2007).

Cited in *Porubiansky v. Emory Univ.*, 156 Ga. App. 602, 275 S.E.2d 163 (1980); *Ga. Dep’t of Cmty. Health, Div. of Health Planning v. Gwinnett Hosp. Sys.*, 262 Ga. App. 879, 586 S.E.2d 762 (2003); *Live Oak Consulting, Inc. v. Dep’t of Cmty. Health*, 281 Ga. App. 791, 637 S.E.2d 455 (2006).

OPINIONS OF THE ATTORNEY GENERAL

Editor’s notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, §§ 88-112, 88-117, and former Code Section 31-2-1, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section.

Regulation of quarantine and control of tuberculosis. — Department of Human Resources (now the Department of Community Health for these purposes)

has authority to make reasonable rules and regulations regarding quarantine and control of communicable tuberculosis. 1945-47 Op. Att’y Gen. p. 530 (decided under former Code 1933, §§ 88-112 and 88-117).

Phenylketonuria and other inborn errors of metabolism in infants are conditions which the legislature intended to cover under Ga. L. 1964, p. 499, § 1 (see O.C.G.A. § 31-2-9); the State Board of Health (now the Department of Commu-

nity Health for these purposes) has authority to adopt and promulgate reasonable rules and regulations which will affect prevention, correction, and abatement of such situations and conditions so long as such rules do not violate constitutional or legal guarantees of any person and are within the purview of the powers and duties imposed upon the State Health Department (now the Department of Community Health for these purposes). 1965-66 Op. Att'y Gen. No. 65-81.

Adoption of rules and regulations concerning phenylketonuria would be for the purpose of detection and prevention of a condition which adversely affects the health of citizens of the state, and the State Board of Health (now the Department of Community Health for these purposes) is authorized to adopt such rules and regulations. 1965-66 Op. Att'y Gen. No. 65-81.

Regulation of septic tank construction outside city limits. — Georgia Department of Public Health (now the Department of Community Health for these purposes) is authorized to adopt and enforce rules and regulations establishing standards for construction of septic tanks for housing located outside city limits. 1968 Op. Att'y Gen. No. 68-185.

Power to promulgate rules as to abortions. — Board of Human Resources (now the Department of Community Health for these purposes) has power to promulgate rules and regulations governing abortions when the board finds such regulation appropriate to promote or safeguard the public health; the General Assembly not only gave authority to do this but actually directed that it be done. 1973 Op. Att'y Gen. No. 73-24.

Abortions in facilities under control of department. — Abortions in facilities or institutions under supervision and administrative control of department may be regulated. 1973 Op. Att'y Gen. No. 73-24.

Scope of regulatory power over abortion clinics or other facilities. — With respect to regulation of abortion clinics or other facilities which are not statutorily included in Ga. L. 1964, p. 499, § 1 et seq., or Ga. L. 1970, p. 531, § 1 et seq. (see O.C.G.A. Art. 1, Ch. 7, T. 31, or

O.C.G.A. Ch. 22, T. 31), the board (now the Department of Community Health for these purposes) is empowered to regulate these facilities as well as the performance of abortions generally. 1973 Op. Att'y Gen. No. 73-24.

Authority to regulate abortion procedures subject to constitutional developments. — Under its purposely broad statutory authority to safeguard public health, as well as under its statutory authority in specific areas of the public health field, the Board of Human Resources (now the Department of Community Health for these purposes) may regulate, for public health purposes, performance of abortion procedures, limited, however, by constitutional doctrines enunciated by the Supreme Court of the United States. 1973 Op. Att'y Gen. No. 73-24.

Scope of authority regarding Emergency Medical Services standard. — Department of Public Health (now the Department of Community Health for these purposes) was authorized pursuant to its general powers to administer those portions of the Emergency Medical Services standard which pertain to gathering, compilation, and publishing of information regarding emergency medical services and injuries produced by motor vehicle accidents; however, there was no authority for the department to establish training and licensing requirements in various areas covered by Emergency Medical Services standard, nor did there exist any enforcement procedures to assure compliance with any such requirements if established. 1967 Op. Att'y Gen. No. 67-355 (see O.C.G.A. § 31-2-1).

Power to administer Title XIX of Social Security Act. — State Department of Public Health (now the Department of Community Health for these purposes) is vested with ample legal authority to administer Title XIX of Social Security Act in Georgia. 1967 Op. Att'y Gen. No. 67-273.

Casualty insurance carried by regulated institutions not subject to department's regulation. — As requirement of carrying adequate casualty insurance is a matter which does not pertain to protection of health and lives of

patients in institutions nor to kind and quality of building, equipment, facilities, and institutional services that institutions shall have and use in order to properly care for patients, the Department of Human Resources (now the Department of Community Health for these purposes) cannot legally pass a valid rule requiring institutions to carry adequate casualty insurance. 1967 Op. Att'y Gen. No. 67-177.

Erection of highway signs stating local fluoridated water meets department approval. — As installation of signs on United States and state highways stating that local fluoridated water supply system had been approved by Georgia Department of Public Health (now the Department of Community Health for these purposes) would not in reality affect prevention, correction, and

abatement of situations and conditions, which, if not promptly checked, would militate against health of constituents of community, such installation is not within the purview of powers granted to the State Board of Health (now the Department of Community Health for these purposes). 1967 Op. Att'y Gen. No. 67-177.

Department's discretion to withhold state funds from a county. — State Health Department (now Department of Human Resources) has power to withhold at the department's discretion state funds from a county on a variety of grounds, including refusal of county commissioners to approve budget submitted by the county board of health, and can refuse to increase salaries of board of health's staff in line with State Personnel Board rules. 1965-66 Op. Att'y Gen. No. 66-165.

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Health, §§ 1, 8 et seq.

C.J.S. — 39A C.J.S., Health and Environment, § 1 et seq.

ALR. — Right of one detained pursuant to quarantine to habeas corpus, 2 ALR 1542.

General delegation of power to guard against spread of contagious disease, 8 ALR 836.

Quarantine of typhoid carrier, 22 ALR 845.

Legality of voluntary nontherapeutic sterilization, 35 ALR3d 1444.

Validity and construction of statute or ordinance prohibiting commercial exhibition of malformed or disfigured persons, 62 ALR3d 1237.

Regulation of business of tattooing, 81 ALR3d 1212.

Propriety of state or local government health officer's warrantless search-post-Camara cases, 53 ALR4th 1168.

31-2-2. Definitions.

As used in this chapter, the term:

(1) "Board" means the Board of Community Health established under Code Section 31-2-3.

(2) "Commissioner" means the commissioner of community health established under Code Section 31-2-6.

(3) "Department" means the Department of Community Health established under Code Section 31-2-4.

(4) "Predecessor agency or unit" means the Department of Community Health, the Division of Public Health of the Department of Human Resources, and the Office of Regulatory Services of the Department of Human Resources.

(5) "State health benefit plan" means the health insurance plan authorized under Article 1 of Chapter 18 of Title 45 and Part 6 of Article 17 of Chapter 2 of Title 20.

(6) "State Personnel Board" means the board established under Article IV, Section III of the Constitution. (Code 1981, § 31-5A-2, enacted by Ga. L. 1999, p. 296, § 1; Code 1981, § 31-2-2, as redesignated by Ga. L. 2009, p. 453, § 1-1/HB 228.)

Editor's notes. — Ga. L. 2009, p. 453, § 1-1/HB 228, effective July 1, 2009, re-designated former Code Section 31-2-2 as present Code Section 31-2-7.

31-2-3. Board of Community Health reconstituted; powers, functions, and duties; terms of board members; vacancies; removal; chairperson; expenses.

(a) There is reconstituted the Board of Community Health, as of July 1, 2009, which shall establish the general policy to be followed by the Department of Community Health. The powers, functions, and duties of the Board of Community Health as they existed on June 30, 2009, are transferred to the reconstituted Board of Community Health effective July 1, 2009. The board shall consist of nine members appointed by the Governor and confirmed by the Senate.

(b) Board members in office on June 30, 2009, shall serve out the remainder of their respective terms and successors to these board seats shall be appointed in accordance with this Code section. Thereafter, all succeeding appointments shall be for three-year terms from the expiration of the previous term.

(c) Vacancies in office shall be filled by appointment by the Governor in the same manner as the appointment to the position on the board which becomes vacant, and the appointment shall be submitted to the Senate for confirmation at the next session of the General Assembly. An appointment to fill a vacancy other than by expiration of a term of office shall be for the balance of the unexpired term.

(d) Members of the board may be removed from office under the same conditions for removal from office of members of professional licensing boards provided in Code Section 43-1-17.

(e) There shall be a chairperson of the board elected by and from the membership of the board who shall be the presiding officer of the board.

(f) The members of the board shall receive a per diem allowance and expenses as shall be set and approved by the Office of Planning and Budget in conformance with rates and allowances set for members of other state boards. (Code 1981, § 31-5A-3, enacted by Ga. L. 1999, p. 296, § 1; Ga. L. 2000, p. 1706, § 19; Code 1981, § 31-2-3, as redesignated by Ga. L. 2009, p. 453, § 1-1/HB 228.)

Cross references. — Rules and regulations as to sanitary requirements; inspections; unsanitary condition as nuisance, § 43-10-6. Creation of Board of Human Services, creation of position of commissioner of human services, and further provisions regarding general func-

tions and powers of Department of Human Services, T. 49, C. 2.

Editor's notes. — Ga. L. 2009, p. 453, § 1-1/HB 228, effective July 1, 2009, redesignated former Code Section 31-2-3 as present Code Section 31-2-8.

31-2-4. Department's powers, duties, functions, and responsibilities; divisions; directors; contracts for health benefits.

(a)(1)(A) The Department of Community Health is re-created and established to perform the functions and assume the duties and powers exercised on June 30, 2009, by the Department of Community Health, the Division of Public Health of the Department of Human Resources, and the Office of Regulatory Services of the Department of Human Resources, unless specifically transferred to the Department of Human Services, and such department, division, and office shall be reconstituted as the Department of Community Health effective July 1, 2009. The department shall retain powers and responsibility with respect to the expenditure of any funds appropriated to the department including, without being limited to, funds received by the state pursuant to the settlement of the lawsuit filed by the state against certain tobacco companies, *State of Georgia, et al. v. Philip Morris, Inc., et al.*, Civil Action #E-61692, V19/246 (Fulton County Superior Court, December 9, 1998).

(B) On and after July 1, 2011, the functions, duties, and powers of the Department of Community Health relating to the former Division of Public Health of the Department of Human Resources shall be performed and exercised by the Department of Public Health pursuant to Code Section 31-2A-2. No power, function, responsibility, duty, or similar authority held by the Department of Community Health as of June 30, 2009, shall be diminished or lost due to the creation of the Department of Public Health.

(2) The director of the Division of Public Health in office on June 30, 2009, and the director of the Office of Regulatory Services in office on June 30, 2009, shall become directors of the respective division or office which those predecessor agencies or units have become on and after July 1, 2009, and until such time as the commissioner appoints other directors of such divisions or units. The position of director of the Division of Public Health shall be abolished effective July 1, 2011.

(b) Reserved.

(c) The Board of Regents of the University System of Georgia is authorized to contract with the department for health benefits for

members, employees, and retirees of the board of regents and the dependents of such members, employees, and retirees and for the administration of such health benefits. The department is also authorized to contract with the board of regents for such purposes.

(d) In addition to its other powers, duties, and functions, the department:

(1) Shall be the lead agency in coordinating and purchasing health care benefit plans for state and public employees, dependents, and retirees and may also coordinate with the board of regents for the purchase and administration of such health care benefit plans for its members, employees, dependents, and retirees;

(2) Is authorized to plan and coordinate medical education and physician work force issues;

(3) Shall investigate the lack of availability of health insurance coverage and the issues associated with the uninsured population of this state. In particular, the department is authorized to investigate the feasibility of creating and administering insurance programs for small businesses and political subdivisions of the state and to propose cost-effective solutions to reducing the numbers of uninsured in this state;

(4) Is authorized to appoint a health care work force policy advisory committee to oversee and coordinate work force planning activities;

(5) Is authorized to solicit and accept donations, contributions, and gifts and receive, hold, and use grants, devises, and bequests of real, personal, and mixed property on behalf of the state to enable the department to carry out its functions and purposes;

(6) Is authorized to award grants, as funds are available, to hospital authorities and hospitals for public health purposes, pursuant to Code Sections 31-7-94 and 31-7-94.1;

(7) Shall make provision for meeting the cost of hospital care of persons eligible for public assistance to the extent that federal matching funds are available for such expenditures for hospital care. To accomplish this purpose, the department is authorized to pay from funds appropriated for such purposes the amount required under this paragraph into a trust fund account which shall be available for disbursement for the cost of hospital care of public assistance recipients. The commissioner, subject to the approval of the Office of Planning and Budget, on the basis of the funds appropriated in any year, shall estimate the scope of hospital care available to public assistance recipients and the approximate per capita cost of such care. Monthly payments into the trust fund for hospital care shall be

made on behalf of each public assistance recipient and such payments shall be deemed encumbered for assistance payable. Ledger accounts reflecting payments into and out of the hospital care fund shall be maintained for each of the categories of public assistance established under Code Section 49-4-3. The balance of state funds in such trust fund for the payment of hospital costs in an amount not to exceed the amount of federal funds held in the trust fund by the department available for expenditure under this paragraph shall be deemed encumbered and held in trust for the payment of the costs of hospital care and shall be rebudgeted for this purpose on each quarterly budget required under the laws governing the expenditure of state funds. The state auditor shall audit the funds in the trust fund established under this paragraph in the same manner that any other funds disbursed by the department are audited;

(8) Shall classify and license community living arrangements in accordance with the rules and regulations promulgated by the department for the licensing and enforcement of licensing requirements for persons whose services are financially supported, in whole or in part, by funds authorized through the Department of Behavioral Health and Developmental Disabilities. To be eligible for licensing as a community living arrangement, the residence and services provided must be integrated within the local community. All community living arrangements licensed by the department shall be subject to the provisions of Code Sections 31-2-8 and 31-7-2.2. No person, business entity, corporation, or association, whether operated for profit or not for profit, may operate a community living arrangement without first obtaining a license or provisional license from the department. A license issued pursuant to this paragraph is not assignable or transferable. As used in this paragraph, the term "community living arrangement" means any residence, whether operated for profit or not, which undertakes through its ownership or management to provide or arrange for the provision of housing, food, one or more personal services, support, care, or treatment exclusively for two or more persons who are not related to the owner or administrator of the residence by blood or marriage;

(9) Shall establish, by rule adopted pursuant to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," a schedule of fees for licensure activities for institutions and other health care related entities required to be licensed, permitted, registered, or commissioned by the department pursuant to Chapter 7, 13, 23, or 44 of this title, Chapter 5 of Title 26, paragraph (8) of this subsection, or Article 7 of Chapter 6 of Title 49. Such schedules shall be determined in a manner so as to help defray the costs incurred by the department, but in no event to exceed such costs, both direct and indirect, in providing such licensure activities. Such fees may be annually adjusted by the

department but shall not be increased by more than the annual rate of inflation as measured by the Consumer Price Index, as reported by the Bureau of Labor Statistics of the United States Department of Labor. All fees paid thereunder shall be paid into the general funds of the State of Georgia. It is the intent of the General Assembly that the proceeds from all fees imposed pursuant to this paragraph be used to support and improve the quality of licensing services provided by the department; and

(10)(A) May accept the certification or accreditation of an entity or program by a certification or accreditation body, in accordance with specific standards, as evidence of compliance by the entity or program with the substantially equivalent departmental requirements for issuance or renewal of a permit or provisional permit, provided that such certification or accreditation is established prior to the issuance or renewal of such permits. The department may not require an additional departmental inspection of any entity or program whose certification or accreditation has been accepted by the department, except to the extent that such specific standards are less rigorous or less comprehensive than departmental requirements. Nothing in this Code section shall prohibit either departmental inspections for violations of such standards or requirements or the revocation of or refusal to issue or renew permits, as authorized by applicable law, or for violation of any other applicable law or regulation pursuant thereto.

(B) For purposes of this paragraph, the term:

(i) "Entity or program" means an agency, center, facility, institution, community living arrangement, drug abuse treatment and education program, or entity subject to regulation by the department under Chapters 7, 13, 22, 23, and 44 of this title; Chapter 5 of Title 26; paragraph (8) of this subsection; and Article 7 of Chapter 6 of Title 49.

(ii) "Permit" means any license, permit, registration, or commission issued by the department pursuant to the provisions of the law cited in division (i) of this subparagraph. (Code 1981, § 31-5A-4, enacted by Ga. L. 1999, p. 296, § 1; Ga. L. 2001, p. 1240, § 1; Ga. L. 2002, p. 1132, § 1; Ga. L. 2002, p. 1324, § 1-4; Code 1981 § 31-2-4, as redesignated by Ga. L. 2009, p. 453, § 1-1/HB 228; Ga. L. 2009, p. 745, § 2/SB 97; Ga. L. 2010, p. 1014, § 1/HB 994; Ga. L. 2011, p. 705, § 4-2/HB 214.)

The 2010 amendment, effective July 1, 2010, in subsection (d), deleted "and" from the end of paragraph (d)(7), in the last sentence of paragraph (d)(8), substituted "support" for "supports" and substi-

tuted a semicolon for a period at the end, and added paragraphs (d)(9) and (d)(10).

The 2011 amendment, effective July 1, 2011, designated the existing provisions of paragraph (a)(1) as subparagraph

(a)(1)(A), and added subparagraph (a)(1)(B); added the second sentence in paragraph (a)(2); substituted 'Reserved' for the former provisions of subsection (b), relating to an 11 member advisory council created in the department of Women's Health and serving in an advisory capacity to public and private agencies; substituted "31-2-8" for "31-2-11" in the middle of paragraph (d)(8); and substituted "May" for "The department may" at the beginning of subparagraph (d)(10)(A).

Cross references. — Georgia Commission on Women, T. 50, C. 12, A. 5.

Code Commission notes. — Ga. L. 2009, p. 745, § 2(14), effective July 1, 2009, purported to substitute "State Personnel Administration" for "State Merit System of Personnel Administration" in former Code Section 31-5A-4, but that amendment was not given effect due to the redesignation and amendment by Ga.

L. 2009, p. 453, § 1-1, effective July 1, 2009.

Pursuant to Code Section 28-9-5, in 2009, "work force" was substituted for "workforce" in paragraph (d)(2) and "of" was deleted preceding "the amount required" in the second sentence of paragraph (d)(7).

Editor's notes. — Ga. L. 2009, p. 453, § 1-1/HB 228, effective July 1, 2009, redesignated former Code Section 31-2-4 as present Code Section 31-2-9.

Administrative rules and regulations. — Hearings and petitions for rule-making, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Human Resources, Administration, Chapter 290-1-1.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

JUDICIAL DECISIONS

Cited in Ga. Dep't of Cmty. Health, Div. of Health Planning v. Gwinnett Hosp. Sys., 262 Ga. App. 879, 586 S.E.2d 762

(2003); Live Oak Consulting, Inc. v. Dep't of Cmty. Health, 281 Ga. App. 791, 637 S.E.2d 455 (2006).

31-2-5. Transfer of personnel and functions; conforming to federal standards of personnel administration; existing procedures, regulations, and agreements; rules adoption and implementation.

(a) All persons employed in a predecessor agency or unit on June 30, 2009, shall, on July 1, 2009, become employees of the department. Such employees shall be subject to the employment practices and policies of the department on and after July 1, 2009, but the compensation and benefits of such transferred employees shall not be reduced as a result of such transfer. Employees who are subject to the rules of the State Personnel Board and who are transferred to the department shall retain all existing rights under such rules. Retirement rights of such transferred employees existing under the Employees' Retirement System of Georgia or other public retirement systems on June 30, 2009, shall not be impaired or interrupted by the transfer of such employees and membership in any such retirement system shall continue in the same status possessed by the transferred employees on June 30, 2009. Accrued annual and sick leave possessed by said employees on June 30, 2009, shall be retained by said employees as employees of the department.

(b)(1) The department shall conform to federal standards for a merit system of personnel administration in any respects necessary for receiving federal grants, and the board is authorized and empowered to effect such changes as may, from time to time, be necessary in order to comply with such standards.

(2) The department is authorized to employ, on a full-time or part-time basis, such medical, supervisory, institutional, and other professional personnel and such clerical and other employees as may be necessary to discharge the duties of the department under this chapter. The department is also authorized to contract for such professional services as may be necessary.

(3) Classified employees of the department under this chapter shall in all instances be employed and dismissed in accordance with rules of the State Personnel Board.

(4) All personnel of the department are authorized to be members of the Employees' Retirement System of Georgia as provided in Chapter 2 of Title 47. All rights, credits, and funds in that retirement system which are possessed by state personnel transferred by provisions of this chapter to the department, or otherwise had by persons at the time of employment with the department, are continued and preserved, it being the intention of the General Assembly that such persons shall not lose any rights, credits, or funds to which they may be entitled prior to becoming employees of the department.

(c) The department shall succeed to all rules, regulations, policies, procedures, and administrative orders of the predecessor agency or unit which were in effect on June 30, 2009, or scheduled to go into effect on or after July 1, 2009, and which relate to the functions transferred to the department by this chapter. Such rules, regulations, policies, procedures, and administrative orders shall remain in effect until amended, repealed, superseded, or nullified by proper authority or as otherwise provided by law. Rules of the department shall be adopted, promulgated, and implemented as provided in Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," except that only rules promulgated pursuant to Chapter 6 of this title shall be subject to the provisions of Code Section 31-6-21.1.

(d) The rights, privileges, entitlements, and duties of parties to contracts, leases, agreements, and other transactions entered into before July 1, 2009, by any predecessor agency or unit and which pertain to the functions transferred to the department by this chapter shall continue to exist; and none of these rights, privileges, entitlements, and duties are impaired or diminished by reason of the transfer of the functions to the department. In all such instances, the Department of Community Health shall be substituted for the predecessor

agency or unit, and the Department of Community Health shall succeed to the rights and duties under such contracts, leases, agreements, and other transactions.

(e) On July 1, 2009, the department shall receive custody of the state owned real property in the custody of the predecessor agency or unit on June 30, 2009, and which pertains to the functions transferred to the department by this chapter. (Code 1981, § 31-5A-5, enacted by Ga. L. 1999, p. 296, § 1; Ga. L. 2001, p. 1240, § 2; Code 1981, § 31-2-5, as redesignated by Ga. L. 2009, p. 453 § 1-1/HB 228; Ga. L. 2009, p. 745, § 2/SB 97; Ga. L. 2012, p. 446, § 2-33/HB 642.)

The 2012 amendment, effective July 1, 2012, in subsection (a), in the third sentence, deleted “and thereby under the State Personnel Administration” following “State Personnel Board” near the middle and substituted “such rules” for “the State Personnel Administration” at the end.

Code Commission notes. — Ga. L. 2009, p. 745, § 2(15), effective July 1, 2009, purported to substitute “State Personnel Administration” for “State Merit System of Personnel Administration” in former Code Section 31-5A-5, but that amendment was not given effect due to the redesignation and amendment by Ga. L. 2009, p. 453, § 1-1, effective July 1, 2009.

Pursuant to Code Section 28-9-5, in 2009, “State Personnel Administration” was substituted for “State Merit System of Personnel Administration” twice in the third sentence of subsection (a).

Editor’s notes. — Ga. L. 2009, p. 453, § 1-1/HB 228, effective July 1, 2009, redesignated former Code Section 31-2-5 as present Code Section 31-2-10.

Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: “Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act.” This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: “Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90.”

31-2-6. Commissioner of community health created; creation of divisions; allocation of functions.

(a) There is created the position of commissioner of community health. The commissioner shall be the chief administrative officer of the department and shall be subject to appointment and removal by the Governor. Subject to the general policy established by the board, the commissioner shall supervise, direct, account for, organize, plan, administer, and execute the functions vested in the department.

(b) There shall be created in the department such divisions as may be found necessary for its effective operation. The commissioner shall have the power to allocate and reallocate functions among the divisions within the department. (Code 1981, § 31-5A-6, enacted by Ga. L. 1999, p. 296, § 1; Code 1981, § 31-2-6, as redesignated by Ga. L. 2009, p. 453, § 1-1/HB 228; Ga. L. 2011, p. 705, § 4-3/HB 214; Ga. L. 2011, p. 752, § 31/HB 142.)

The 2011 amendments. — The first 2011 amendment, effective July 1, 2011, substituted “The” for “Except for the Division of Public Health, the” at the beginning of the second sentence of subsection (b). The second 2011 amendment, effective May 13, 2011, part of an Act to revise, modernize, and correct the Code, substituted “The Division of Public Health” for “The Division of Public Health” at the beginning of the second sentence of subsection (b).

Editor’s notes. — Ga. L. 2009, p. 453, § 1-1/HB 228, effective July 1, 2009, redesignated former Code Section 31-2-6 as present Code Section 31-2-11.

Ga. L. 2011, p. 752, § 54(e)/HB 142, not codified by the General Assembly, pro-

vides that: “In the event of an irreconcilable conflict between a provision in Sections 1 through 53 of this Act and a provision of another Act enacted at the 2011 regular session of the General Assembly, the provision of such other Act shall control over the conflicting provision in Sections 1 through 53 of this Act to the extent of the conflict.” Accordingly, the amendment to subsection (b) of this Code section by Ga. L. 2011, p. 752, § 31(1)/HB 142, was not given effect.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011). For article, “Health: Department of Public Health,” see 28 Ga. St. U.L. Rev. 147 (2011).

31-2-7. Rules and regulations; variances and waivers to rules and regulations establishing licensure standards for facilities; exemption of classes of facilities from regulation.

(a) The department is authorized to adopt and promulgate rules and regulations to effect prevention, abatement, and correction of situations and conditions which, if not promptly checked, would militate against the health of the people of this state. Such rules and regulations shall be adapted to the purposes intended, within the purview of the powers and duties imposed upon the department by this chapter, and supersede conflicting rules, regulations, and orders adopted pursuant to the authority of Chapter 3 of this title.

(b) The department upon application or petition may grant variances and waivers to specific rules and regulations which establish standards for facilities or entities regulated by the department as follows:

(1) The department may authorize departure from the literal requirements of a rule or regulation by granting a variance upon a showing by the applicant or petitioner that the particular rule or regulation that is the subject of the variance request should not be applied as written because strict application would cause undue hardship. The applicant or petitioner additionally must show that adequate standards affording protection of health, safety, and care exist and will be met in lieu of the exact requirements of the rule or regulation in question;

(2) The department may dispense entirely with the enforcement of a rule or regulation by granting a waiver upon a showing by the applicant or petitioner that the purpose of the rule or regulation is

met through equivalent standards affording equivalent protection of health, safety, and care;

(3) The department may grant waivers and variances to allow experimentation and demonstration of new and innovative approaches to delivery of services upon a showing by the applicant or petitioner that the intended protections afforded by the rule or regulation which is the subject of the request are met and that the innovative approach has the potential to improve service delivery;

(4) Waivers or variances which affect an entire class of facilities may only be approved by the Board of Community Health and shall be for a time certain, as determined by the board. A notice of the proposed variance or waiver affecting an entire class of facilities shall be made in accordance with the requirements for notice of rule making in Chapter 13 of Title 50, the “Georgia Administrative Procedure Act”; or

(5) Variances or waivers which affect only one facility in a class may be approved or denied by the department and shall be for a time certain, as determined by the department. The department shall maintain a record of such action and shall make this information available to the board and all other persons who request it.

This subsection shall not apply to rules adopted by the department pursuant to Code Section 31-6-21.1.

(c) The department may exempt classes of facilities from regulation when, in the department’s judgment, regulation would not permit the purpose intended or the class of facilities is subject to similar requirements under other rules and regulations. Such exemptions shall be provided in rules and regulations promulgated by the board. (Code 1933, § 88-110, enacted by Ga. L. 1964, p. 499, § 1; Code 1981, § 31-2-4; Ga. L. 1982, p. 1592, §§ 1, 2; Ga. L. 1990, p. 791, § 1; Ga. L. 2003, p. 569, § 1; Code 1981, § 31-2-9, as redesignated by Ga. L. 2009, p. 453, § 1-1/HB 228; Code 1981, § 31-2-7, as redesignated by Ga. L. 2011, p. 705, § 4-4/HB 214.)

The 2011 amendment, effective July 1, 2011, redesignated former Code Section 31-2-9 as present Code Section 31-2-7.

Editor’s notes. — Ga. L. 2009, p. 453, § 1-1, effective July 1, 2009, redesignated former Code Section 31-2-7 as present Code Section 31-2-12.

Ga. L. 2011, p. 705, § 3-2/HB 214, effective July 1, 2011, redesignated former Code Section 31-2-7 as present Code Section 31-2A-8.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

OPINIONS OF THE ATTORNEY GENERAL

Editor’s notes. — In light of the similarity of the statutory provisions, opinions

under former Code 1933, §§ 88-112 and 88-117, which were subsequently repealed

but were succeeded by provisions of this Code section, are included in the annotations for this Code section.

Authority to regulate, quarantine, and control tuberculosis. — Department of Human Resources (now the Department of Community Health for these purposes) has authority to make reasonable rules and regulations regarding quarantine and control of communicable tuberculosis. 1945-47 Op. Att'y Gen. p. 530 (decided under former Code 1933, §§ 88-112 and 88-117).

Power to promulgate rules as to abortions. — Board of Human Resources (now the Department of Community Health for these purposes) has power to promulgate rules and regulations governing abortions when the board finds such regulation appropriate to promote or safeguard the public health; the General Assembly not only gave authority to do this but actually directed that it be done. 1973 Op. Att'y Gen. No. 73-24.

Phenylketonuria and other inborn errors of metabolism in infants are conditions which the legislature intended to cover; the State Board of Health (now the Department of Community Health for these purposes) has authority to adopt and promulgate reasonable rules and regulations which will affect prevention, correction, and abatement of such situations and conditions so long as such rules do not violate constitutional or legal guarantees of any person and are within the purview

of the powers and duties imposed upon the State Health Department (now the Department of Community Health for these purposes). 1965-66 Op. Att'y Gen. No. 65-81.

Authority to adopt rules and regulations concerning phenylketonuria. — Adoption of rules and regulations concerning phenylketonuria would be for purpose of detection and prevention of condition which adversely affects health of citizens of the state, and State Board of Health (now the Department of Community Health for these purposes) is authorized to adopt such rules and regulations. 1965-66 Op. Att'y Gen. No. 65-81.

Regulation of septic tank construction outside city limits. — Georgia Department of Public Health (now the Department of Community Health for these purposes) is authorized to adopt and enforce rules and regulations establishing standards for construction of septic tanks for housing located outside city limits. 1968 Op. Att'y Gen. No. 68-185.

Authority to require licensees under Chapter 13 to notify employees of radiation. — Ample statutory authority exists for Department of Public Health (now the Department of Community Health for these purposes) to require persons or firms licensed under Ga. L. 1964, p. 499 to notify an employee in writing when the employee has received radiation exposure in excess of prescribed limits. 1968 Op. Att'y Gen. No. 68-299.

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Health, § 1 et seq.

C.J.S. — 39A C.J.S., Health and Environment, § 5.

31-2-8. Actions against certain applicants or licensees.

(a) This Code section shall be applicable to any agency, center, facility, institution, community living arrangement, drug abuse treatment and education program, or entity subject to regulation by the department under Chapters 7, 13, 22, 23, and 44 of this title; Chapter 5 of Title 26; paragraph (8) of subsection (d) of Code Section 31-2-4; and Article 7 of Chapter 6 of Title 49. For purposes of this Code section, the term "license" shall be used to refer to any license, permit, registration, or commission issued by the department pursuant to the provisions of the law cited in this subsection.

(b) The department shall have the authority to take any of the actions enumerated in subsection (c) of this Code section upon a finding that the applicant or licensee has:

(1) Knowingly made any false statement of material information in connection with the application for a license, or in statements made or on documents submitted to the department as part of an inspection, survey, or investigation, or in the alteration or falsification of records maintained by the agency, facility, institution, or entity;

(2) Failed or refused to provide the department with access to the premises subject to regulation or information pertinent to the initial or continued licensing of the agency, facility, institution, or entity;

(3) Failed to comply with the licensing requirements of this state;
or

(4) Failed to comply with any provision of this Code section.

(c) When the department finds that any applicant or licensee has violated any provision of subsection (b) of this Code section or laws, rules, regulations, or formal orders related to the initial or continued licensing of the agency, facility, institution, or entity, the department, subject to notice and opportunity for hearing, may take any of the following actions:

(1) Refuse to grant a license; provided, however, that the department may refuse to grant a license without holding a hearing prior to taking such action;

(2) Administer a public reprimand;

(3) Suspend any license for a definite period or for an indefinite period in connection with any condition which may be attached to the restoration of said license;

(4) Prohibit any applicant or licensee from allowing a person who previously was involved in the management or control, as defined by rule, of any agency, facility, institution, or entity which has had its license or application revoked or denied within the past 12 months to be involved in the management or control of such agency, facility, institution, or entity;

(5) Revoke any license;

(6) Impose a fine, not to exceed a total of \$25,000.00, of up to \$1,000.00 per day for each violation of a law, rule, regulation, or formal order related to the initial or ongoing licensing of any agency, facility, institution, or entity, except that no fine may be imposed against any nursing facility, nursing home, or intermediate care

facility which is subject to intermediate sanctions under the provisions of 42 U.S.C. Section 1396r(h)(2)(A), as amended, whether or not those sanctions are actually imposed; or

(7) Limit or restrict any license as the department deems necessary for the protection of the public, including, but not limited to, restricting some or all services of or admissions into an agency, facility, institution, or entity for a time certain.

In taking any of the actions enumerated in this subsection, the department shall consider the seriousness of the violation, including the circumstances, extent, and gravity of the prohibited acts, and the hazard or potential hazard created to the health or safety of the public.

(d)(1) With respect to any facility classified as a nursing facility, nursing home, or intermediate care home, the department may not take an action to fine or restrict the license of any such facility based on the same act, occurrence, or omission for which:

(A) The facility has received an intermediate sanction under the provisions of 42 U.S.C. Section 1396r(h)(2)(A), as amended, or 42 U.S.C. Section 1395i-3(h)(2)(B); or

(B) Such facility has been served formal notice of intent to take such a sanction which the department based on administrative review or any other appropriate body based on administrative or judicial review determines not to impose; provided, however, that nothing in this subsection shall prohibit the department from utilizing the provisions authorized under subsection (f) of this Code section.

(2) When any civil monetary penalty is recommended and imposed against such facility, and the department does not resurvey the facility within 48 hours after the date by which all items on a plan of correction submitted by the facility are to be completed, the accrual of any resulting civil monetary penalties shall be suspended until the facility is resurveyed by the department.

(3) If the department resurveys such facility beyond 48 hours after the final date for completion of all items on the plan of correction submitted by the facility, and the facility is not in substantial compliance with the applicable standards, any civil monetary penalties imposed shall relate back to the date on which such penalties were suspended.

(4) Notwithstanding the provisions of paragraphs (2) and (3) of this subsection, nothing contained in said paragraphs shall be construed as requiring the state survey agency to act in violation of applicable federal law, regulations, and guidelines.

(e) The department may deny a license or otherwise restrict a license for any applicant who has had a license denied, revoked, or suspended within one year of the date of an application or who has transferred ownership or governing authority of an agency, facility, institution, or entity subject to regulation by the department within one year of the date of a new application when such transfer was made in order to avert denial, revocation, or suspension of a license. ~

(f) With regard to any contested case instituted by the department pursuant to this Code section or other provisions of law which may now or hereafter authorize remedial or disciplinary grounds and action, the department may, in its discretion, dispose of the action so instituted by settlement. In such cases, all parties, successors, and assigns to any settlement agreement shall be bound by the terms specified therein, and violation thereof by any applicant or licensee shall constitute grounds for any action enumerated in subsection (c) of this Code section.

(g) The department shall have the authority to make public or private investigations or examinations inside or outside of this state to determine whether the provisions of this Code section or any other law, rule, regulation, or formal order relating to the licensing of any agency, facility, institution, or entity has been violated. Such investigations may be initiated at any time, in the discretion of the department, and may continue during the pendency of any action initiated by the department pursuant to subsection (c) of this Code section.

(h) For the purpose of conducting any investigation, inspection, or survey, the department shall have the authority to require the production of any books, records, papers, or other information related to the initial or continued licensing of any agency, facility, institution, or entity.

(i) Pursuant to the investigation, inspection, and enforcement powers given to the department by this Code section and other applicable laws, the department may assess against an agency, facility, institution, or entity reasonable and necessary expenses incurred by the department pursuant to any administrative or legal action required by the failure of the agency, facility, institution, or entity to fully comply with the provisions of any law, rule, regulation, or formal order related to the initial or continued licensing. Assessments shall not include attorney's fees and expenses of litigation, shall not exceed other actual expenses, and shall only be assessed if such investigations, inspection, or enforcement actions result in adverse findings, as finally determined by the department, pursuant to administrative or legal action.

(j) For any action taken or any proceeding held under this Code section or under color of law, except for gross negligence or willful or

wanton misconduct, the department, when acting in its official capacity, shall be immune from liability and suit to the same extent that any judge of any court of general jurisdiction in this state would be immune.

(k) In an administrative or legal proceeding under this Code section, a person or entity claiming an exemption or an exception granted by law, rule, regulation, or formal order has the burden of proving this exemption or exception.

(l) This Code section and all actions resulting from its provisions shall be administered in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

(m) The provisions of this Code section shall be supplemental to and shall not operate to prohibit the department from acting pursuant to those provisions of law which may now or hereafter authorize remedial or disciplinary grounds and action for the department. In cases where those other provisions of law so authorize other disciplinary grounds and actions, but this Code section limits such grounds or actions, those other provisions shall apply.

(n) The department is authorized to promulgate rules and regulations to implement the provisions of this Code section. (Code 1981, § 31-2-6, enacted by Ga. L. 1991, p. 341, § 1; Ga. L. 1993, p. 1290, § 1; Ga. L. 1994, p. 1856, § 1; Ga. L. 1999, p. 296, § 24; Ga. L. 2000, p. 526, § 2; Ga. L. 2001, p. 1230, § 1; Ga. L. 2003, p. 298, § 2; Ga. L. 2003, p. 558, § 1; Code 1981, § 31-2-11, as redesignated by Ga. L. 2009, p. 453, § 1-1/HB 228; Code 1981, § 31-2-8, as redesignated by Ga. L. 2011, p. 705, § 4-4/HB 214.)

The 2011 amendment, effective July 1, 2011, redesignated former Code Section 31-2-11 as present Code Section 31-2-8.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1991, "42 U.S.C. Section 1396r (h)(2)(A)" was substituted for "42 U.S.C. Section 1396r(h)(2)(a)" in paragraph (c)(6).

Pursuant to Code Section 28-9-5, in 2000, "44" was substituted for "43" in subsection (a).

Pursuant to Code Section 28-9-5, in 2006, the substitution of "23, and 44" for "and 23" was retained in subsection (a) due to the elimination of the repeal of T. 31, Ch. 44, in accordance with Ga. L. 2005, p. 1194, § 1.

Editor's notes. — Ga. L. 2003, p. 298, § 3(b), not codified by the General Assembly, provided that the first 2003 amendment became effective July 1 of the fiscal

year following the year in which funds are specifically appropriated for the purposes of this Act in an appropriations Act making specific reference to this Act and shall become effective when funds so appropriated become available for expenditure. Funds were appropriated at the 2007 session of the General Assembly, and thus the first 2003 amendment became effective July 1, 2008.

Ga. L. 2005, p. 1194, § 1/SB 48, not codified by the General Assembly, provides: "(b) The following provision of law is repealed:

Section 4 of an Act amending Title 31 of the Official Code of Georgia Annotated, relating to health, approved April 20, 2000 (Ga. L. 2000, p. 526), which now repealed section would have provided for a future repeal or sunset of certain provisions relating to renal dialysis facilities."

This 2005 law effectively repeals the automatic repeal provision of Ga. L. 2000, p. 526.

Ga. L. 2011, p. 705, § 3-2/HB 214, effective July 1, 2011, redesignated former Code Section 31-2-8 as present Code Section 31-2A-9.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

For note on the 2001 amendment to this Code section, see 18 Ga. St. U.L. Rev. 158 (2001).

31-2-9. Records check requirement for certain facilities; definitions; use of information gathered in investigation; penalties for unauthorized release or disclosure; rules and regulations.

(a) As used in this Code section, the term:

(1) “Conviction” means a finding or verdict of guilty or a plea of guilty regardless of whether an appeal of the conviction has been sought.

(2) “Crime” means commission of the following offenses:

(A) A violation of Code Section 16-5-1, relating to murder and felony murder;

(B) A violation of Code Section 16-5-21, relating to aggravated assault;

(C) A violation of Code Section 16-5-24, relating to aggravated battery;

(D) A violation of Code Section 16-5-70, relating to cruelty to children;

(E) A violation of Code Section 16-5-100, relating to cruelty to a person 65 years of age or older;

(F) A violation of Code Section 16-6-1, relating to rape;

(G) A violation of Code Section 16-6-2, relating to aggravated sodomy;

(H) A violation of Code Section 16-6-4, relating to child molestation;

(I) A violation of Code Section 16-6-5, relating to enticing a child for indecent purposes;

(J) A violation of Code Section 16-6-5.1, relating to sexual assault against persons in custody, detained persons, or patients in hospitals or other institutions;

(K) A violation of Code Section 16-6-22.2, relating to aggravated sexual battery;

(L) A violation of Code Section 16-8-41, relating to armed robbery;

(M) A violation of Code Section 30-5-8, relating to abuse, neglect, or exploitation of a disabled adult or elder person;

(N) Any other offense committed in another jurisdiction that, if committed in this state, would be deemed to be a crime listed in this paragraph without regard to its designation elsewhere; or

(O) Any other criminal offense as determined by the department and established by rule adopted pursuant to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," that would indicate the unfitness of an individual to provide care to or be in contact with persons residing in a facility.

(3) "Criminal record" means any of the following:

(A) Conviction of a crime;

(B) Arrest, charge, and sentencing for a crime where:

(i) A plea of nolo contendere was entered to the charge;

(ii) First offender treatment without adjudication of guilt pursuant to the charge was granted; or

(iii) Adjudication or sentence was otherwise withheld or not entered on the charge; or

(C) Arrest and being charged for a crime if the charge is pending, unless the time for prosecuting such crime has expired pursuant to Chapter 3 of Title 17.

(4) "Facility" means a:

(A) Personal care home required to be licensed or permitted under Code Section 31-7-12;

(B) Assisted living community required to be licensed under Code Section 31-7-12.2;

(C) Private home care provider required to be licensed under Article 13 of Chapter 7 of this title; or

(D) Community living arrangement subject to licensure under paragraph (8) of subsection (d) of Code Section 31-2-4.

(5) "GCIC" means the Georgia Crime Information Center established under Article 2 of Chapter 3 of Title 35.

(6) "GCIC information" means criminal history record information as defined in Code Section 35-3-30.

(7) "License" means the document issued by the department to authorize the facility to operate.

(8) "Owner" means any individual or any person affiliated with a corporation, partnership, or association with 10 percent or greater ownership interest in a facility providing care to persons under the license of the facility in this state and who:

(A) Purports to or exercises authority of the owner in a facility;

(B) Applies to operate or operates a facility;

(C) Maintains an office on the premises of a facility;

(D) Resides at a facility;

(E) Has direct access to persons receiving care at a facility;

(F) Provides direct personal supervision of facility personnel by being immediately available to provide assistance and direction during the time such facility services are being provided; or

(G) Enters into a contract to acquire ownership of a facility.

(9) "Records check application" means fingerprints in such form and of such quality as prescribed by the Georgia Crime Information Center and under standards adopted by the Federal Bureau of Investigation and a records search fee to be established by the department by rule and regulation, payable in such form as the department may direct to cover the cost of obtaining criminal background information pursuant to this Code section.

(b) An owner with a criminal record shall not operate or hold a license to operate a facility, and the department shall revoke the license of any owner operating a facility or refuse to issue a license to any owner operating a facility if it determines that such owner has a criminal record; provided, however, that an owner who holds a license to operate a facility on or before June 30, 2007, shall not have his or her license revoked prior to a hearing being held before a hearing officer pursuant to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

(c)(1) Prior to approving any license for a new facility and periodically as established by the department by rule and regulation, the department shall require an owner to submit a records check application. The department shall establish a uniform method of obtaining an owner's records check application.

(2)(A) Unless the department contracts pursuant to subparagraph (B) of this paragraph, the department shall transmit to the GCIC the fingerprints and records search fee from each fingerprint records check application in accordance with Code Section 35-3-35.

Upon receipt thereof, the GCIC shall promptly transmit the fingerprints to the Federal Bureau of Investigation for a search of bureau records and an appropriate report and shall promptly conduct a search of its records and records to which it has access. Within ten days after receiving fingerprints acceptable to the GCIC and the fee, the GCIC shall notify the department in writing of any criminal record or if there is no such finding. After a search of Federal Bureau of Investigation records and fingerprints and upon receipt of the bureau's report, the department shall make a determination about an owner's criminal record and shall notify the owner in writing as to the department's determination as to whether the owner has or does not have a criminal record.

(B) The department may either perform criminal background checks under agreement with the GCIC or contract with the GCIC and appropriate law enforcement agencies which have access to GCIC and Federal Bureau of Investigation information to have those agencies perform for the department criminal background checks for owners. The department or the appropriate law enforcement agencies may charge reasonable fees for performing criminal background checks.

(3)(A) The department's determination regarding an owner's criminal record, or any action by the department revoking or refusing to grant a license based on such determination, shall constitute a contested case for purposes of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," except that any hearing required to be held pursuant thereto may be held reasonably expeditiously after such determination or action by the department.

(B) In a hearing held pursuant to subparagraph (A) of this paragraph or subsection (b) of this Code section, the hearing officer shall consider in mitigation the length of time since the crime was committed, the absence of additional criminal charges, the circumstances surrounding the commission of the crime, other indicia of rehabilitation, the facility's history of compliance with the regulations, and the owner's involvement with the licensed facility in arriving at a decision as to whether the criminal record requires the denial or revocation of the license to operate the facility. Where a hearing is required, at least 30 days prior to such hearing, the hearing officer shall notify the office of the prosecuting attorney who initiated the prosecution of the crime in question in order to allow the prosecutor to object to a possible determination that the conviction would not be a bar for the grant or continuation of a license as contemplated within this Code section. If objections are made, the hearing officer shall take such objections into consideration in considering the case.

(4) Neither the GCIC, the department, any law enforcement agency, nor the employees of any such entities shall be responsible for the accuracy of information nor have any liability for defamation, invasion of privacy, negligence, or any other claim in connection with any dissemination of information or determination based thereon pursuant to this Code section.

(d) All information received from the Federal Bureau of Investigation or the GCIC shall be for the exclusive purpose of approving or denying the granting of a license to a new facility or the revision of a license of an existing facility when a new owner is proposed and shall not be released or otherwise disclosed to any other person or agency. All such information collected by the department shall be maintained by the department pursuant to laws regarding and the rules or regulations of the Federal Bureau of Investigation and the GCIC, as is applicable. Penalties for the unauthorized release or disclosure of any such information shall be as prescribed pursuant to laws regarding and rules or regulations of the Federal Bureau of Investigation and the GCIC, as is applicable.

(e) The requirements of this Code section are supplemental to any requirements for a license imposed by Article 3 of Chapter 5 of Title 49 or Article 11 of Chapter 7 of this title.

(f) The department shall promulgate written rules and regulations to implement the provisions of this Code section. (Code 1981, § 31-2-14, enacted by Ga. L. 2009, p. 453, § 1-1/HB 228; Ga. L. 2010, p. 878, § 31/HB 1387; Ga. L. 2011, p. 227, § 10/SB 178; Code 1981, § 31-2-9, as redesignated by Ga. L. 2011, p. 705, § 4-4/HB 214; Ga. L. 2012, p. 351, § 2/HB 1110.)

The 2010 amendment, effective June 3, 2010, part of an Act to revise, modernize, and correct the Code, in subparagraph (a)(4)(B), substituted “this title” for “Title 31”; and, at the beginning of paragraph (a)(5), substituted “GCIC” for “CIC”.

The 2011 amendments. — The first 2011 amendment, effective July 1, 2011, added present subparagraph (a)(4)(B), and redesignated former subparagraphs (a)(4)(B) and (a)(4)(C) as present subparagraphs (a)(4)(C) and (a)(4)(D), respectively. The second 2011 amendment, effective July 1, 2011, redesignated former Code Section 31-2-14 as present Code Section 31-2-9.

The 2012 amendment, effective July 1, 2012, in paragraph (a)(2), deleted “or” at the end of subparagraph (M), substituted “; or” for a period at the end of subparagraph (N), and added subparagraph (a)(2)(O).

Editor’s notes. — Ga. L. 2011, p. 705, § 4-4/HB 214, effective July 1, 2011, redesignated former Code Section 31-2-9 as present Code Section 31-2-7.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

31-2-10. Information and comparisons regarding state-wide cost and quality of health care.

Performance and outcome data and pricing data for selected medical conditions, surgeries, and procedures in hospitals, ambulatory surgery centers, nursing homes, and rehabilitation centers in Georgia shall be reported to the Department of Community Health on a regular basis. The department shall provide for the establishment of a website for the purpose of providing consumers information on the cost and quality of health care in Georgia to include but not be limited to cost comparison information on certain prescription drugs at different pharmacies in Georgia, hospitals, ambulatory surgery centers, nursing homes, and rehabilitation centers and facilities in Georgia. (Code 1981, § 31-5A-7, enacted by Ga. L. 2007, p. 133, § 19/HB 24; Ga. L. 2008, p. 324, § 31/SB 455; Code 1981, § 31-2-15, as redesignated by Ga. L. 2009, p. 453, § 1-1/HB 228; Code 1981, § 31-2-10, as redesignated by Ga. L. 2011, p. 705, § 4-4/HB 214.)

The 2011 amendment, effective July 1, 2011, redesignated former Code Section 31-2-15 as present Code Section 31-2-10.

Editor's notes. — Ga. L. 2007, p. 133, § 1/HB 24, not codified by the General Assembly, provides: "(a) The General Assembly has long recognized the right of the individual to control all aspects of his or her personal care and medical treatment, including the right to insist upon medical treatment, decline medical treatment, or direct that medical treatment be withdrawn. In order to secure these rights, the General Assembly has adopted and amended statutes recognizing the living will and health care agency and provided statutory forms for both documents.

"(b) The General Assembly has determined that the statutory forms for the living will and durable power of attorney for health care are confusing and inconsistent and that the statutes providing for the living will and health care agency contain conflicting concepts, inconsistent and out-of-date terminology, and confusing and inconsistent requirements for execution. In addition, there is a commendable trend among the states to combine the concepts of the living will and health care agency into a single legal document.

"(c) The General Assembly recognizes that a significant number of individuals representing the academic, medical, legis-

lative, and legal communities, state officials, ethics scholars, and advocacy groups worked together to develop the advance directive for health care contained in this Act, and the collective intent was to create a form that uses understandable and everyday language in order to encourage more citizens of this state to execute advance directives for health care.

"(d) The General Assembly finds that the clear expression of an individual's decisions regarding health care, whether made by the individual or an agent appointed by the individual, is of critical importance not only to citizens but also to the health care and legal communities, third parties, and families. In furtherance of these purposes, the General Assembly enacts a new Chapter 32 of Title 31, setting forth general principles governing the expression of decisions regarding health care and the appointment of a health care agent, as well as a form of advance directive for health care."

Ga. L. 2011, p. 705, § 3-2/HB 214, effective July 1, 2011, redesignated former Code Section 31-2-10 as present Code Section 31-2A-10.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011). For article, "Health: Department of Public Health," see 28 Ga. St. U.L. Rev. 147 (2011).

31-2-11. Biopharmaceuticals; expedited review for Georgia based companies.

(a) As used in this Code section, the term:

(1) “Biopharmaceutical” means the application of biotechnology to the development of pharmaceutical products that improve human health.

(2) “Biotechnology” means any technological application that uses biological systems, living organisms, or derivatives thereof to make or modify products or processes for specific use.

(3) “Georgia biotechnology, biopharmaceutical, or pharmaceutical company” means a biotechnology, biopharmaceutical, or pharmaceutical company, or a corporate division of such a company:

(A) The principal activity of which is research or development, manufacturing, or sales of health care products in this state; and

(B)(i) That had a total economic impact in this state of not less than \$60 million during the most recent taxable year;

(ii) That has total capital investment in this state of not less than \$100 million; and

(iii) That employs at least 200 Georgia residents.

Such term shall not mean a warehouse used to store health care products.

(4) “Pharmaceutical” means of or pertaining to the knowledge or art of pharmacy or to the art of preparing medicines according to the rules or formulas of pharmacy.

(5) “Research and development” means experimental or laboratory activity for the ultimate purpose of developing new products, improving existing products, developing new uses for existing products, or developing or improving methods for producing products.

(6) “Total economic impact” means the sum of total employee payroll, investment in external research and development, the value of prescription drug samples provided to physicians, and the value of prescription drugs donated to low-income individuals through patient assistance programs.

(b) The Department of Community Health shall expedite the review of any prescription drug or other health care product having an approved indication from the federal Food and Drug Administration for use with humans and that is produced by a Georgia biotechnology, biopharmaceutical, or pharmaceutical company for any health care coverage provided under the state health benefit plan under Article 1 of

Chapter 18 of Title 45, the medical assistance program under Article 7 of Chapter 4 of Title 49, the PeachCare for Kids Program under Article 13 of Chapter 5 of Title 49, or any other health benefit plan or policy administered by or on behalf of the state. Such review shall take place as soon as practicable following the date that such drug or health care product becomes available for public consumption. This subsection shall apply to all contracts entered into or renewed by the Department of Community Health on or after July 1, 2008.

(c) In complying with the provisions of this Code section, the department shall consider the nexus of a biotechnology, biopharmaceutical, or pharmaceutical company in relation to the state along with the financial impact on the state, the quality of the product, and other relevant factors. (Code 1981, § 31-5A-8, enacted by Ga. L. 2008, p. 121, § 1/HB 180; Ga. L. 2009, p. 8, § 31/SB46; Code 1981, § 31-2-16, as redesignated by Ga. L. 2009, p. 453, § 1-1/HB 228; Code 1981, § 31-2-11, as redesignated by Ga. L. 2011, p. 705, § 4-4/HB 214; Ga. L. 2012, p. 775, § 31/HB 942.)

The 2011 amendment, effective July 1, 2011, redesignated former Code Section 31-2-16 as present Code Section 31-2-11.

The 2012 amendment, effective May 1, 2012, part of an Act to revise, modernize, and correct the Code, revised language in the first sentence of subsection (b).

Editor's notes. — Ga. L. 2011, p. 705, § 4-4/HB 214, effective July 1, 2011, redesignated former Code Section 31-2-11 as present Code Section 31-2-8.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

31-2-12. Redesignated.

Editor's notes. — Ga. L. 2011, p. 705, § 3-2/HB 214, effective July 1, 2011, re-

designated former Code Section 31-2-12 as present Code Section 31-2A-11.

31-2-13. Redesignated.

Editor's notes. — Ga. L. 2011, p. 705, § 3-2/HB 214, effective July 1, 2011, re-

designated former Code Section 31-2-13 as present Code Section 31-2A-12.

31-2-14. Redesignated.

Editor's notes. — Ga. L. 2011, p. 705, § 4-4/HB 214, effective July 1, 2011, re-

designated former Code Section 31-2-14 as present Code Section 31-2-9.

31-2-15. Redesignated.

Editor's notes. — Ga. L. 2011, p. 705, § 4-4/HB 214, effective July 1, 2011, re-

designated former Code Section 31-2-15 as present Code Section 31-2-10.

31-2-16. Redesignated.

Editor's notes. — Ga. L. 2011, p. 705, § 4-4/HB 214, effective July 1, 2011, re-designated former Code Section 31-2-16 as present Code Section 31-2-11.

31-2-17. Redesignated.

Editor's notes. — Ga. L. 2011, p. 705, § 3-2/HB 214, effective July 1, 2011, re-designated former Code Section 31-2-17 as present Code Section 31-2A-13.

31-2-17.1. Redesignated.

Editor's notes. — Ga. L. 2011, p. 705, § 3-2/HB 214, effective July 1, 2011, re-designated former Code Section 31-2-17.1 as present Code Section 31-2A-14.

31-2-18. Redesignated.

Editor's notes. — Ga. L. 2011, p. 705, § 3-2/HB 214, effective July 1, 2011, re-designated former Code Section 31-2-18 as present Code Section 31-2A-15.

31-2-19. Advisory Council for Public Health; members; meetings.

Repealed by Ga. L. 2011, p. 705, § 4-5/HB 214, effective July 1, 2011.

Editor's notes. — This Code section was based on Code 1981, § 31-2-19, enacted by Ga. L. 2009, p. 453, § 1-1/HB 228.

Law reviews. — For article on the 2011 repeal of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

31-2-20. Public Health Commission; members; purpose; authority.

Repealed by Ga. L. 2009, p. 453, § 1-1/HB 228, effective December 31, 2010.

Editor's notes. — This code section was based on Code 1981, § 31-2-20, enacted by Ga. L. 2009, p. 453, § 1-1/HB 228.

CHAPTER 2A

DEPARTMENT OF PUBLIC HEALTH

Sec.		Sec.	
31-2A-1.	Creation of Board of Public Health; powers, duties, and functions of Board of Community Health transferred to the Board of Public Health; board composition and terms; vacancies, removal; chairperson; reimbursement of expenses.		data from law enforcement relevant to employment decisions; criminal history information.
31-2A-2.	Creation of Department of Public Health; transition of powers, function, and duties to new agency; commissioner of public health; creation of divisions.	31-2A-8.	Department as agency of state for receipt and administration of federal and other funds.
31-2A-3.	Department of Public Health successor to certain rules, regulations, policies, procedures, administrative orders, rights, interests, and obligations of Department of Community Health.	31-2A-9.	Studies and surveys of programs.
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		31-2A-15.	Additional duties of commissioner; authority to convene expert panels and consult with experts.

Law reviews. — For article on the 2011 enactment of this chapter, see 28 Ga. St. U. L. Rev. 147 (2011).

31-2A-1. Creation of Board of Public Health; powers, duties, and functions of Board of Community Health transferred to the Board of Public Health; board composition and terms; vacancies, removal; chairperson; reimbursement of expenses.

(a) There is created the Board of Public Health which shall establish the general policy to be followed by the Department of Public Health. The powers, functions, and duties of the Board of Community Health as they existed on June 30, 2011, with regard to the Division of Public Health and the Office of Health Improvement, unless otherwise pro-

vided in this Act, are transferred to the Board of Public Health effective July 1, 2011. The board shall consist of nine members appointed by the Governor and confirmed by the Senate.

(b) The Governor shall designate the initial terms of the members of the board as follows: three members shall be appointed for one year; three members shall be appointed for two years; and three members shall be appointed for three years. Thereafter, all succeeding appointments shall be for three-year terms from the expiration of the previous term.

(c) Vacancies in office shall be filled by appointment by the Governor in the same manner as the appointment to the position on the board which becomes vacant. An appointment to fill a vacancy other than by expiration of a term of office shall be for the balance of the unexpired term.

(d) Members of the board may be removed from office under the same conditions for removal from office of members of professional licensing boards provided in Code Section 43-1-17.

(e) There shall be a chairperson of the board elected by and from the membership of the board who shall be the presiding officer of the board.

(f) The members of the board shall receive the same daily expense allowance and reimbursement of expenses as provided in Code Section 45-7-21 for members of other state boards. (Code 1981, § 31-2A-1, enacted by Ga. L. 2011, p. 705, § 3-1/HB 214.)

Effective date. — This Code section Department of Public Health,” see 28 Ga. became effective July 1, 2011. St. U.L. Rev. 147 (2011).

Law reviews. — For article, “Health:

31-2A-2. Creation of Department of Public Health; transition of powers, function, and duties to new agency; commissioner of public health; creation of divisions.

(a) There is created a Department of Public Health. The powers, functions, and duties of the Division of Public Health and the Office of Health Improvement of the Department of Community Health as they existed on June 30, 2011, unless otherwise provided in this Act, are transferred to the Department of Public Health effective July 1, 2011.

(b) There is created the position of commissioner of public health. The commissioner shall be the chief administrative officer of the department and be both appointed and removed by the Governor. Subject to the general policy established by the board, the commissioner shall supervise, direct, account for, organize, plan, administer, and execute the functions vested in the department.

(c) There shall be created in the department such divisions as may be found necessary for its effective operation. The commissioner shall have the power to allocate and reallocate functions among the divisions within the department. (Code 1981, § 31-2A-2, enacted by Ga. L. 2011, p. 705, § 3-1/HB 214.)

Effective date. — This Code section Department of Public Health,” see 28 Ga. became effective July 1, 2011. St. U.L. Rev. 147 (2011).

Law reviews. — For article, “Health:

31-2A-3. Department of Public Health successor to certain rules, regulations, policies, procedures, administrative orders, rights, interests, and obligations of Department of Community Health.

(a) The Department of Public Health shall succeed to all rules, regulations, policies, procedures, and administrative orders of the Department of Community Health that are in effect on June 30, 2011, or scheduled to go into effect on or after July 1, 2011, and which relate to the functions transferred to the Department of Public Health pursuant to Code Section 31-2A-2 and shall further succeed to any rights, privileges, entitlements, obligations, and duties of the Department of Community Health that are in effect on June 30, 2011, which relate to the functions transferred to the Department of Public Health pursuant to Code Section 31-2A-2. Such rules, regulations, policies, procedures, and administrative orders shall remain in effect until amended, repealed, superseded, or nullified by the Department of Public Health by proper authority or as otherwise provided by law.

(b) The rights, privileges, entitlements, and duties of parties to contracts, leases, agreements, and other transactions as identified by the Office of Planning and Budget entered into before July 1, 2011, by the Department of Community Health which relate to the functions transferred to the Department of Public Health pursuant to Code Section 31-2A-2 shall continue to exist; and none of these rights, privileges, entitlements, and duties are impaired or diminished by reason of the transfer of the functions to the Department of Public Health. In all such instances, the Department of Public Health shall be substituted for the Department of Community Health, and the Department of Public Health shall succeed to the rights and duties under such contracts, leases, agreements, and other transactions.

(c) All persons employed by the Department of Community Health in capacities which relate to the functions transferred to the Department of Public Health pursuant to Code Section 31-2A-2 on June 30, 2011, shall, on July 1, 2011, become employees of the Department of Public Health in similar capacities, as determined by the commissioner of public health. Such employees shall be subject to the employment

practices and policies of the Department of Public Health on and after July 1, 2011, but the compensation and benefits of such transferred employees shall not be reduced as a result of such transfer. Employees who are subject to the rules of the State Personnel Board and who are transferred to the department shall retain all existing rights under such rules. Accrued annual and sick leave possessed by the transferred employees on June 30, 2011, shall be retained by such employees as employees of the Department of Public Health.

(d) On July 1, 2011, the Department of Public Health shall receive custody of the state owned real property in the custody of the Department of Community Health on June 30, 2011, and which pertains to the functions transferred to the Department of Public Health pursuant to Code Section 31-2A-2. (Code 1981, § 31-2A-3, enacted by Ga. L. 2011, p. 705, § 3-1/HB 214; Ga. L. 2012, p. 446, § 2-34/HB 642.)

Effective date. — This Code section became effective July 1, 2011.

The 2012 amendment, effective July 1, 2012, in subsection (c), in the third sentence, deleted “and thereby under the State Personnel Administration” following “State Personnel Board” near the middle, and substituted “such rules” for “the State Personnel Administration” at the end.

Editor’s notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: “Personnel, equipment, and facilities that were as-

signed to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act.” This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: “Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90.”

31-2A-4. Obligation to safeguard and promote health of people of the state.

The Department of Public Health shall safeguard and promote the health of the people of this state and is empowered to employ all legal means appropriate to that end. Illustrating, without limiting, the foregoing grant of authority, the department is empowered to:

(1) Provide epidemiological investigations and laboratory facilities and services in the detection and control of disease, disorders, and disabilities and to provide research, conduct investigations, and disseminate information concerning reduction in the incidence and proper control of disease, disorders, and disabilities;

(2) Forestall and correct physical, chemical, and biological conditions that, if left to run their course, could be injurious to health;

(3) Regulate and require the use of sanitary facilities at construction sites and places of public assembly and to regulate persons, firms, and corporations engaged in the rental and service of portable chemical toilets;

(4) Isolate and treat persons afflicted with a communicable disease who are either unable or unwilling to observe the department's rules and regulations for the suppression of such disease and to establish, to that end, complete or modified quarantine, surveillance, or isolation of persons and animals exposed to a disease communicable to man;

(5) Procure and distribute drugs and biologicals and purchase services from clinics, laboratories, hospitals, and other health facilities and, when authorized by law, to acquire and operate such facilities;

(6) Cooperate with agencies and departments of the federal government and of the state by supplying consultant services in medical and hospital programs and in the health aspects of civil defense, emergency preparedness, and emergency response;

(7) Prevent, detect, and relieve physical defects and deformities;

(8) Promote the prevention, early detection, and control of problems affecting the dental and oral health of the citizens of Georgia;

(9) Contract with county boards of health to assist in the performance of services incumbent upon them under Chapter 3 of this title and, in the event of grave emergencies of more than local peril, to employ whatever means may be at its disposal to overcome such emergencies;

(10) Contract and execute releases for assistance in the performance of its functions and the exercise of its powers and to supply services which are within its purview to perform;

(11) Enter into or upon public or private property at reasonable times for the purpose of inspecting same to determine the presence of disease and conditions deleterious to health or to determine compliance with health laws and rules, regulations, and standards thereunder;

(12) Establish, by rule adopted pursuant to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," a schedule of fees for laboratory services provided, schedules to be determined in a manner so as to help defray the costs incurred by the department, but in no event to exceed such costs, both direct and indirect, in providing such laboratory services, provided no person shall be denied services on the basis of his or her inability to pay. All fees paid thereunder shall be paid into the general funds of the State of Georgia. The individual who requests the services authorized in this paragraph, or the individual for whom the laboratory services authorized in this paragraph are performed, shall be responsible for payment of the service fees. As used in this paragraph, the term "individual" means

a natural person or his or her responsible health benefit policy or Title XVIII, XIX, or XXI of the federal Social Security Act of 1935; and

(13) Exchange data with the Department of Community Health for purposes of health improvement and fraud prevention for programs operated by the Department of Community Health pursuant to mutually agreed upon data sharing agreements and in accordance with federal confidentiality laws relating to health care. (Code 1981, § 31-2A-4, enacted by Ga. L. 2011, p. 705, § 3-1/HB 214.)

Effective date. — This Code section became effective July 1, 2011.

31-2A-5. Office of Women's Health; duties.

(a) There is created in the department the Office of Women's Health. Attached to the office shall be an 11 member advisory council. The members of the advisory council shall be appointed by the Governor and shall be representative of major public and private agencies and organizations in the state and shall be experienced in or have demonstrated particular interest in women's health issues. Each member shall be appointed for two years and until his or her successor is appointed. The members shall be eligible to succeed themselves. The council shall elect its chairperson from among the councilmembers for a term of two years. The Governor may name an honorary chairperson of the council.

(b) The Office of Women's Health shall serve in an advisory capacity to the Governor, the General Assembly, the board, the department, and all other state agencies in matters relating to women's health. In particular, the office shall:

(1) Raise awareness of women's nonreproductive health issues;

(2) Inform and engage in prevention and education activities relating to women's nonreproductive health issues;

(3) Serve as a clearing-house for women's health information for purposes of planning and coordination;

(4) Issue reports of the office's activities and findings; and

(5) Develop and distribute a state comprehensive plan to address women's health issues.

(c) The council shall meet upon the call of its chairperson, the board, or the commissioner. (Code 1981, § 31-2A-5, enacted by Ga. L. 2011, p. 705, § 3-1/HB 214.)

Effective date. — This Code section became effective July 1, 2011.

31-2A-6. Rules and regulations.

(a) The department is authorized to adopt and promulgate rules and regulations to effect prevention, abatement, and correction of situations and conditions which, if not promptly checked, would militate against the health of the people of this state. Such rules and regulations shall be adapted to the purposes intended, within the purview of the powers and duties imposed upon the department by this chapter, and supersede conflicting rules, regulations, and orders adopted pursuant to the authority of Chapter 3 of this title.

(b) The department upon application or petition may grant variances and waivers to specific rules and regulations which establish standards for facilities or entities regulated by the department as follows:

(1) The department may authorize departure from the literal requirements of a rule or regulation by granting a variance upon a showing by the applicant or petitioner that the particular rule or regulation that is the subject of the variance request should not be applied as written because strict application would cause undue hardship. The applicant or petitioner additionally must show that adequate standards affording protection of health, safety, and care exist and will be met in lieu of the exact requirements of the rule or regulation in question;

(2) The department may dispense entirely with the enforcement of a rule or regulation by granting a waiver upon a showing by the applicant or petitioner that the purpose of the rule or regulation is met through equivalent standards affording equivalent protection of health, safety, and care;

(3) The department may grant waivers and variances to allow experimentation and demonstration of new and innovative approaches to delivery of services upon a showing by the applicant or petitioner that the intended protections afforded by the rule or regulation which is the subject of the request are met and that the innovative approach has the potential to improve service delivery;

(4) Waivers or variances which affect an entire class of facilities may only be approved by the Board of Public Health and shall be for a time certain, as determined by the board. A notice of the proposed variance or waiver affecting an entire class of facilities shall be made in accordance with the requirements for notice of rule making in Chapter 13 of Title 50, the "Georgia Administrative Procedure Act"; or

(5) Variances or waivers which affect only one facility in a class may be approved or denied by the department and shall be for a time certain, as determined by the department. The department shall

maintain a record of such action and shall make this information available to the board and all other persons who request it.

(c) The department may exempt classes of facilities from regulation when, in the department's judgment, regulation would not permit the purpose intended or the class of facilities is subject to similar requirements under other rules and regulations. Such exemptions shall be provided in rules and regulations promulgated by the board. (Code 1981, § 31-2A-6, enacted by Ga. L. 2011, p. 705, § 3-1/HB 214.)

Effective date. — This Code section became effective July 1, 2011.

31-2A-7. "Conviction data" defined; department authorized to receive data from law enforcement relevant to employment decisions; criminal history information.

(a) As used in this Code section, the term "conviction data" means a record of a finding or verdict of guilty or a plea of guilty or a plea of nolo contendere with regard to any crime, regardless of whether an appeal of the conviction has been sought.

(b) The department may receive from any law enforcement agency conviction data that is relevant to a person whom the department, its contractors, or a district or county health agency is considering as a final selectee for employment in a position the duties of which involve direct care, treatment, custodial responsibilities, or any combination thereof for its clients. The department may also receive conviction data which is relevant to a person whom the department, its contractors, or a district or county health agency is considering as a final selectee for employment in a position if, in the judgment of the department, a final employment decision regarding the selectee can only be made by a review of conviction data in relation to the particular duties of the position and the security and safety of clients, the general public, or other employees.

(c) The department shall establish a uniform method of obtaining conviction data under subsection (b) of this Code section which shall be applicable to the department and its contractors. Such uniform method shall require the submission to the Georgia Crime Information Center of fingerprints and the records search fee in accordance with Code Section 35-3-35. Upon receipt thereof, the Georgia Crime Information Center shall promptly transmit fingerprints to the Federal Bureau of Investigation for a search of bureau records and an appropriate report and shall promptly conduct a search of its own records and records to which it has access. After receiving the fingerprints and fee, the Georgia Crime Information Center shall notify the department in writing of any derogatory finding, including, but not limited to, any conviction data regarding the fingerprint records check or if there is no such finding.

(d) All conviction data received shall be for the exclusive purpose of making employment decisions or decisions concerning individuals in the care of the department and shall be privileged and shall not be released or otherwise disclosed to any other person or agency. Immediately following the employment decisions or upon receipt of the conviction data, all such conviction data collected by the department or its agent shall be maintained by the department or agent pursuant to laws regarding and the rules or regulations of the Federal Bureau of Investigation and the Georgia Crime Information Center, as is applicable. Penalties for the unauthorized release or disclosure of any conviction data shall be as prescribed pursuant to laws regarding and rules or regulations of the Federal Bureau of Investigation and the Georgia Crime Information Center, as is applicable. Nothing in this Code section shall be construed to allow criminal history information, including arrest and conviction data, to be released or disclosed to any individual, including members of county boards of health, who is not directly involved in the hiring process.

(e) The department may promulgate written rules and regulations to implement the provisions of this Code section.

(f) The department may receive from any law enforcement agency criminal history information, including arrest and conviction data, and any and all other information which it may be provided pursuant to state or federal law which is relevant to any person in the care of the department. The department shall establish a uniform method of obtaining criminal history information under this subsection. Such method shall require the submission to the Georgia Crime Information Center of fingerprints together with any required records search fee in accordance with Code Section 35-3-35. Upon receipt thereof, the Georgia Crime Information Center shall promptly transmit the fingerprints submitted by the department to the Federal Bureau of Investigation for a search of bureau records and an appropriate report and shall promptly conduct a search of its own records and records to which it has access. Such method shall also permit the submission of the names alone of such persons to the proper law enforcement agency for a name based check of such person's criminal history information as maintained by the Georgia Crime Information Center and the Federal Bureau of Investigation. In such circumstances, the department shall submit fingerprints of those persons together with any required records search fee to the Federal Bureau of Investigation within 15 calendar days of the date of the name based check on that person. The fingerprints shall be forwarded to the Federal Bureau of Investigation through the Georgia Crime Information Center in accordance with Code Section 35-3-35. Following the submission of such fingerprints, the department may receive the criminal history information, including arrest and conviction data, relevant to such person.

(g) The department shall be authorized to conduct a name or descriptor based check of any person's criminal history information, including arrest and conviction data, and other information from the Georgia Crime Information Center regarding any adult person who provides care or is in contact with persons under the care of the department without the consent of such person and without fingerprint comparison to the fullest extent permissible by federal and state law. (Code 1981, § 31-2A-7, enacted by Ga. L. 2011, p. 705, § 3-1/HB 214.)

Effective date. — This Code section became effective July 1, 2011.

to Code Section 28-9-5, in 2011, "data" was substituted for "date" in the last sentence

Code Commission notes. — Pursuant

of subsection (d).

31-2A-8. Department as agency of state for receipt and administration of federal and other funds.

The department is designated and empowered as the agency of this state to apply for, receive, and administer grants and donations for health purposes from the federal government and from any of its departments, agencies, and instrumentalities; from appropriations of the state; and from any other sources in conformity with law. The department shall have the authority to prescribe the purposes for which such funds may be used in order to:

(1) Provide, extend, and improve maternal and child health services;

(2) Locate children already disabled or suffering from conditions leading to a disability and provide for such children medical, surgical, corrective, and other services and to provide for facilities for diagnosis, hospitalization, and aftercare;

(3) Advance the prevention and control of cancer and of venereal, tubercular, and other diseases;

(4) Forestall and correct conditions that, if left to run their course, could be injurious to health;

(5) Conduct programs which lie within the scope and the power of the department relating to industrial hygiene, control of ionizing radiation, occupational health, water quality, water pollution control, and planning and development of water resources;

(6) Administer grants-in-aid to assist in the construction of publicly owned and operated general and special medical facilities;

(7) Conduct programs:

(A) Relating to chronic illness;

(B) Relating to the dental and oral health of the people of this state which are appropriate to the purpose of the department; and

(C) Relating to the physical health of the people of this state which are appropriate to the purpose of the department; and

(8) Develop the health aspects of emergency preparedness and emergency response.

When a plan is required to be approved by any department, agency, or instrumentality of the federal government as condition precedent to the making of grants for health purposes, the department, as agent of this state, is directed to formulate, submit, and secure approval of that plan and thereafter, upon its approval and the receipt of funds payable thereunder, to carry the plan into effect in accordance with its terms, applying thereto the funds so received as well as other applicable amounts from whatever source. (Code 1933, § 88-111, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1972, p. 1069, § 3; Ga. L. 1978, p. 941, § 1; Code 1981, § 31-2-2; Code 1981, § 31-2-7, as redesignated by Ga. L. 2009, p. 453, § 1-1/HB 228; Code 1981, § 31-2A-8, as redesignated by Ga. L. 2011, p. 705, § 3-2/HB 214.)

The 2011 amendment, effective July 1, 2011, redesignated former Code Section 31-2-7 as present Code Section 31-2A-8; and deleted “, including but not limited to

Code Section 49-4-152” following “law” at the end of the first sentence of the introductory paragraph.

OPINIONS OF THE ATTORNEY GENERAL

Regulation of septic tank construction outside city limits. — Georgia Department of Public Health (now the Department of Community Health for these purposes) is authorized to adopt and en-

force rules and regulations establishing standards for construction of septic tanks for housing located outside city limits. 1968 Op. Att’y Gen. No. 68-185.

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Health, § 2.

C.J.S. — 39A C.J.S., Health and Environment, § 1 et seq.

ALR. — Presumption as to gratuitous character of services of relative in caring for children of one not of same household, 24 ALR 962.

Liability of one releasing institutionalized mental patient for harm he causes, 38 ALR3d 699.

Right of medical patient to obtain, or physician to prescribe, laetrile for treatment of illness — state cases, 5 ALR4th 219.

31-2A-9. Studies and surveys of programs.

The department, from time to time, shall make or cause to be made studies and surveys to determine the quality, scope, and reach of its programs. (Code 1933, § 88-109, enacted by Ga. L. 1964, p. 499, § 1; Code 1981, § 31-2-3; Code 1981, § 31-2-8, as redesignated by Ga. L. 2009, p. 453, § 1-1/HB 228; Code 1981, § 31-2A-9, as redesignated by Ga. L. 2011, p. 705, § 3-2/HB 214.)

The 2011 amendment, effective July 1, 2011, redesignated former Code Section 31-2-8 as present Code Section 31-2A-9.

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Health, §§ 50, 52, 58, 60, 66, 72, 73. **C.J.S.** — 39A C.J.S., Health and Environment, §§ 28 et seq., 46.

31-2A-10. Venue of actions against department or board.

Actions at law and in equity against the department, the board, or any of its members predicated upon omissions or acts done in their official capacity or under color thereof shall be brought in the appropriate county; provided, however, that nothing in this Code section shall be construed as waiving the immunity of the state to be sued without its consent. (Code 1933, § 88-118, enacted by Ga. L. 1964, p. 499, § 1; Code 1981, § 31-2-5; Ga. L. 1991, p. 94, § 31; Code 1981, § 31-2-10, as redesignated by Ga. L. 2009, p. 453, § 1-1/HB 228; Code 1981, § 31-2A-10, as redesignated by Ga. L. 2011, p. 705, § 3-2/HB 214.)

The 2011 amendment, effective July 1, 2011, redesignated former Code Section 31-2-10 as present Code Section 31-2A-10.

JUDICIAL DECISIONS

“Appropriate county” means the county in which the cause of action originated. *Newsome v. Department of Human Resources*, 199 Ga. App. 419, 405 S.E.2d 61, cert. denied, 199 Ga. App. 906, 405 S.E.2d 61 (1991).

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Health, § 33. Tort liability of governmental unit for injury or damage resulting from insecticide and vermin eradication operations, 25 ALR2d 1057.
C.J.S. — 39A C.J.S., Health and Environment, § 26. Liability for wrongful autopsy, 18 ALR4th 858.
ALR. — Right of one detained pursuant to quarantine to habeas corpus, 2 ALR 1542.

31-2A-11. Standards for sewage management systems.

- (a) As used in this Code section, the term:
 - (1) “Chamber system” means a system of chambers with each chamber being a molded polyolefin plastic, arch shaped, hollow structure with an exposed bottom area and solid top and louvered sidewall for infiltration of effluent into adjoining bottom and sidewall soil areas. Chambers may be of different sizes and configurations to obtain desired surface areas.

(2) "Conventional system" means a system traditionally used composed of perforated pipe surrounded by gravel or stone masking for the infiltration of effluent into adjoining bottom and side soil areas.

(3) "On-site sewage management system" means a sewage management system other than a public or community sewage treatment system serving one or more buildings, mobile homes, recreational vehicles, residences, or other facilities designed or used for human occupancy or congregation. Such term shall include, without limitation, conventional and chamber septic tank systems, privies, and experimental and alternative on-site sewage management systems which are designed to be physically incapable of a surface discharge of effluent that may be approved by the department.

(4) "Prior approved system" means only a chamber system or conventional system or component of such system which is designed to be physically incapable of a surface discharge of effluent and which was properly approved pursuant to subparagraph (a)(2)(B) of this Code section, as such Code section became law on April 19, 1994, for use according to manufacturers' recommendations, prior to April 14, 1997.

(5) "Unsatisfactory service" means documented substandard performance as compared to other approved systems or components.

(b) The department shall have the authority as it deems necessary and proper to adopt state-wide regulations for on-site sewage management systems, including but not limited to experimental and alternative systems. The department is authorized to require that any such on-site sewage management system be examined and approved prior to allowing the use of such system in the state; provided, however, that any prior approved system shall continue to be approved for installation in every county of the state pursuant to the manufacturer's recommendations, including sizing of no less than 50 percent of trench length of a conventional system designed for equal flows in similar soil conditions. Upon written request of one-half or more of the health districts in the state, the department is authorized to require the reexamination of any such system or component thereof, provided that documentation is submitted indicating unsatisfactory service of such system or component thereof. Before any such examination or reexamination, the department may require the person, persons, or organization manufacturing or marketing the system to reimburse the department or its agent for the reasonable expenses of such examination.

(c)(1) This subsection shall not be construed to prohibit the governing authority of any county or municipality in the state from adopting and enforcing codes at the local level; provided, however, that no county, municipality, or state agency may require any certified septic

tank installer or certified septic tank pumper who has executed and deposited a bond as authorized in paragraph (2) of this subsection to give or furnish or execute any code compliance bond or similar bond for the purpose of ensuring that all construction, installation, or modifications are made or completed in compliance with the county or municipal ordinances or building and construction codes.

(2) In order to protect the public from damages arising from any work by a certified septic tank installer or certified septic tank pumper that fails to comply with any state construction codes or with the ordinances or building and construction codes adopted by any county or municipal corporation, any such certified septic tank installer or certified septic tank pumper may execute and deposit with the judge of the probate court in the county of his or her principal place of business a bond in the sum of \$10,000.00. Such bond shall be a cash bond of \$10,000.00 or executed by a surety authorized and qualified to write surety bonds in the State of Georgia and shall be approved by the local county or municipal health department. Such bond shall be conditioned upon all work done or supervised by such certificate holder complying with the provisions of any state construction codes or any ordinances or building and construction codes of any county or municipal corporation wherein the work is performed. Action on such bond may be brought against the principal and surety thereon in the name of and for the benefit of any person who suffers damages as a consequence of said certificate holder's work not conforming to the requirements of any ordinances or building and construction codes; provided, however, that the aggregate liability of the surety to all persons so damaged shall in no event exceed the sum of such bond.

(3) In any case where a bond is required under this subsection, the certified septic tank installer or certified septic tank pumper shall file a copy of the bond with the county or municipal health department in the political subdivision wherein the work is being performed.

(4) The provisions of this subsection shall not apply to or affect any bonding requirements involving contracts for public works as provided in Chapter 10 of Title 13.

(d) This Code section does not restrict the work of a plumber licensed by the State Construction Industry Licensing Board to access any on-site sewage management system for the purpose of servicing or repairing any plumbing system or connection to the on-site sewage management system. (Code 1981, § 31-2-7, enacted by Ga. L. 1992, p. 3308, § 1; Ga. L. 1994, p. 1777, § 1; Ga. L. 1997, p. 708, § 1; Ga. L. 2002, p. 850, § 1; Ga. L. 2006, p. 292, § 1/HB 724; Code 1981, § 31-2-12, as redesignated by Ga. L. 2009, p. 453, § 1-1/HB 228; Code 1981, § 31-2A-11, as redesignated by Ga. L. 2011, p. 705, § 3-2/HB 214.)

The 2011 amendment, effective July 1, 2011, redesignated former Code Section 31-2-12 as present Code Section 31-2A-11; and substituted “tank pumper that fails” for “pumper, which work fails” in the first sentence of paragraph (c)(2).

Code Commission notes. — Pursuant

to Code Section 28-9-5, in 1997, “April 14, 1997” was substituted for “the effective date of this Code section” at the end of paragraph (a)(4).

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

JUDICIAL DECISIONS

Constitutionality. — Manufacturer of systems for on-site management of sewage was not unconstitutionally deprived of a vested right by the 1997 amendment to the statute, which did not include its sys-

tems in the definition of “prior approved systems.” *Jackson County Bd. of Health v. Fugett Constr., Inc.*, 270 Ga. 667, 514 S.E.2d 28 (1999).

31-2A-12. (Repealed effective July 1, 2014) Rules and regulations governing operation of land disposal sites for septic tank waste from one business.

Until July 1, 2014, the department shall provide by rule or regulation for the regulation of any land disposal site that receives septic tank waste from only one septic tank pumping and hauling business and which as of June 30, 2007, operated under a valid permit for such activity as issued by the department (previously known as the Department of Human Resources for these purposes) under this Code section. No new permit shall be issued by the department under this Code section for such type of site on or after July 1, 2007, but instead any new permit issued for such type of site on or after such date shall be issued by the Department of Natural Resources under Code Section 12-8-41. This Code section shall stand repealed on July 1, 2014. (Code 1981, § 31-2-8, enacted by Ga. L. 2002, p. 927, § 6A; Ga. L. 2007, p. 127, § 5/HB 463; Code 1981, § 31-2-13, as redesignated by Ga. L. 2009, p. 453, § 1-1/HB 228; Code 1981, § 31-2A-12, as redesignated by Ga. L. 2011, p. 705, § 3-2/HB 214; Ga. L. 2012, p. 843, § 1B/HB 1102.)

The 2011 amendment, effective July 1, 2011, redesignated former Code Section 31-2-13 as present Code Section 31-2A-12.

The 2012 amendment, effective May 1, 2012, substituted “July 1, 2014” for “July 1, 2012” near the beginning of the first sentence and at the end of the last sentence.

Editor’s notes. — Ga. L. 2009, p. 453,

§ 1-1/HB 228, effective July 1, 2009, redesignated former Code Section 31-2-8 as Code Section 31-2-13 (which was subsequently redesignated as Code Section 31-2A-12 in 2011).

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

31-2A-13. Diabetes coordinator; central repository for data related to prevention and treatment of diabetes.

The commissioner is authorized to appoint a diabetes coordinator within the department to coordinate with other state departments and agencies to ensure that all programs that impact the prevention and treatment of diabetes are coordinated, that duplication of efforts is minimized, and that the impact of such programs is maximized in an attempt to reduce the health consequences and complications of diabetes in Georgia. The department shall serve as the central repository for this state's departments and agencies for data related to the prevention and treatment of diabetes. (Code 1981, § 31-2-17, enacted by Ga. L. 2009, p. 453, § 1-1/HB 228; Code 1981, § 31-2A-13, as redesignated by Ga. L. 2011, p. 705, § 3-2/HB 214.)

The 2011 amendment, effective July 1, 2011, redesignated former Code Section 31-2-17 as present Code Section 31-2A-13; and substituted "department" for "Division of Public Health" in the first and second sentences.

Cross references. — Training school employees in caring for students with diabetes, § 20-2-779.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

31-2A-14. Georgia Diabetes Control Grant Program; advisory committee; administration of authorized grant programs; grant criteria.

(a) There is established within the Department of Public Health the Georgia Diabetes Control Grant Program. The purpose of the grant program shall be to develop, implement, and promote a state-wide effort to combat the proliferation of Type 2 diabetes and pre-diabetes.

(b) The program shall be under the direction of a seven-member advisory committee, appointed by the Governor. The Governor, in making such appointments, shall ensure to the greatest extent possible that the membership of the advisory committee is representative of this state's geographic and demographic composition, with appropriate attention to the representation of women, minorities, and rural Georgia. The appointments made by the Governor shall include one member who is:

- (1) A physician licensed in this state;
- (2) A registered nurse licensed in this state;
- (3) A dietitian licensed in this state;
- (4) A diabetes educator;
- (5) A representative of the business community;
- (6) A pharmacist licensed in this state; and

(7) A consumer who has diabetes.

The commissioner, or his or her designee, shall serve as an ex officio, nonvoting member of the advisory committee. Appointed advisory committee members shall be named for five-year terms staggered so that one term will expire each year, except for the fourth and fifth year, when two terms will expire. Their successors shall be named for five-year terms.

(c) The Georgia Diabetes Control Grant Program shall be authorized to administer two grant programs targeted at new, expanded, or innovative approaches to address diabetes as follows:

(1) A program to provide grants to middle schools and high schools to promote the understanding and prevention of diabetes may be established by the program. Such grants shall be provided through the appropriate local board of education. Grant requests shall contain specific information regarding requirements as to how the grant should be spent and how such spending promotes the understanding and prevention of diabetes. Grant recipients shall be required to provide the advisory committee with quarterly reports of the results of the grant program; and

(2) A program to provide grants to health care providers for support of evidence based diabetes programs for education, screening, disease management, and self-management targeting populations at greatest risk for pre-diabetes, diabetes, and the complications of diabetes; and grants may also be awarded to address evidence based activities that focus on policy, systems, and environmental changes that support prevention, early detection, and treatment of diabetes. Eligible entities shall include community and faith based clinics and other organizations, federally qualified health centers, regional and county health departments, hospitals, and other public entities, and other health related service providers which are qualified as exempt from taxation under the provisions of Section 501(c)(3) of the Internal Revenue Code of 1986. Such entities shall have been in existence for at least three years, demonstrate financial stability, utilize evidence based practices, and show measurable results in their programs.

(d) The advisory committee shall work with the department to establish grant criteria and make award decisions, with the goal of creating a state-wide set of resources to assist residents of Georgia in their efforts to prevent or treat diabetes. Grants shall not be used for funding existing programs.

(e) The grant program shall be under the direction of the diabetes coordinator appointed pursuant to Code Section 31-2A-13. The department shall provide sufficient staff, administrative support, and such

other resources as may be necessary for the diabetes coordinator to carry out the duties required by this Code section.

(f) This Code section shall be subject to appropriation from the General Assembly. (Code 1981, § 31-2-17.1, enacted by Ga. L. 2010, p. 548, § 1-3/SB 435; Code 1981, § 31-2A-14, as redesignated by Ga. L. 2011, p. 705, § 3-2/HB 214; Ga. L. 2011, p. 752, § 31/HB 142.)

Effective date. — This Code section became effective July 1, 2010.

The 2011 amendments. — The first 2011 amendment, effective July 1, 2011, redesignated former Code Section 31-2-17.1 as present Code Section 31-2A-14; substituted “Department of Public Health” for “department’s division of Public Health” in the first sentence of subsection (a); deleted “of the Department of Community Health” following “The commissioner” in the first sentence of the undesignated text at the end of subsection (b); and substituted “Code Section 31-2A-13” for “Code Section 31-2-17” in the first sentence of subsection (e). The second 2011 amendment, effective May 13, 2011, part of an Act to revise, modernize, and correct the Code, substituted “commissioner of community health,” for “commissioner of the Department of Community Health,” in the first sentence of the undesignated text at the end of subsection (b).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2010, “dietitian” was substituted for “dietician” in paragraph (b)(3).

Editor’s notes. — Ga. L. 2010, p. 548, § 1-1/SB 435, not codified by the General Assembly, provides: “The General Assembly finds that:

“(1) Diabetes is a chronic disease caused by the inability of the pancreas to produce insulin or to use the insulin produced in the proper way;

“(2) If untreated and poorly managed, diabetes has been medically proven to lead to blindness, kidney failure, amputation, heart attack, and stroke;

“(3) Diabetes is the sixth leading cause of death in the United States, responsible for a similar number of deaths each year as HIV/AIDS;

“(4) In Georgia, the prevalence of diabetes is 8 percent higher than the nation as a whole;

“(5) One out of three people with diabetes are not aware that they have the disease;

“(6) Without aggressive societal action, the number of people living with diabetes in Georgia will more than double to 1,697,000 people in the next 20 years, cutting life short for these people by ten to 20 years; and

“(7) Without aggressive societal action, the economic burden of diabetes on the State of Georgia is expected to grow from \$5 billion each year to about \$11.9 billion in the next 20 years.”

Ga. L. 2010, p. 548, § 1-2/SB 435, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘Diabetes and Health Improvement Act of 2010.’”

Pursuant to the terms of subsection (f), funds were not appropriated at the 2010, 2011, or 2012 sessions of the General Assembly.

Ga. L. 2011, p. 752, § 54(e)/HB 142, not codified by the General Assembly, provides that: “In the event of an irreconcilable conflict between a provision in Sections 1 through 53 of this Act and a provision of another Act enacted at the 2011 regular session of the General Assembly, the provision of such other Act shall control over the conflicting provision in Sections 1 through 53 of this Act to the extent of the conflict.” Accordingly, the amendment to subsection (b) of this Code section by Ga. L. 2011, p. 752, § 31(2)/HB 142, was not given effect.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

31-2A-15. Additional duties of commissioner; authority to convene expert panels and consult with experts.

(a) In addition to other authority and duties granted in this title, the commissioner shall:

(1) Provide a written report of expenditures made for public health purposes in the prior fiscal year to the Governor, the Speaker of the House of Representatives, and the Lieutenant Governor no later than December 1 of each year beginning December 1, 2010; and

(2) Serve as the chief liaison to county boards of health through their directors on matters related to the operations and programmatic responsibilities of such county boards of health; provided, however, the commissioner may designate a person from within the department to serve as such chief liaison.

(b) The commissioner shall be authorized to convene one or more panels of experts to address various public health issues and may consult with experts on epidemiological and emergency preparedness issues. (Code 1981, § 31-2-18, enacted by Ga. L. 2009, p. 453, § 1-1/HB 228; Code 1981, § 31-2A-15, as redesignated by Ga. L. 2011, p. 705, § 3-2/HB 214.)

The 2011 amendment, effective July 1, 2011, redesignated former Code Section 31-2-18 as present Code Section 31-2A-15; substituted “commissioner” for “director” throughout; deleted the first and second sentences in subsection (a), which read: “The Division of Public Health shall have a director who shall be appointed by the

Governor and serve at the pleasure of the Governor. The director shall report to the Office of the Governor and to the commissioner.”; and substituted “department” for “division” in paragraph (a)(2).

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

CHAPTER 3

COUNTY BOARDS OF HEALTH

Sec.		Sec.	
31-3-1.	Creation.	31-3-9.	Office quarters and equipment.
31-3-2.	Composition; terms of members.	31-3-10.	Legal representation.
31-3-2.1.	Option for certain counties to create board of health and wellness by ordinance.	31-3-11.	Appointments of director and staff; supervision.
31-3-3.	Duty to inform department of membership.	31-3-12.	Duties of director.
31-3-4.	Powers.	31-3-12.1.	Contracts between county boards; authorization for and provisions applicable to county board of health serving as community service board.
31-3-5.	Functions.	31-3-13.	Declaration of public policy; contracts for assistance to boards.
31-3-5.1.	Conformity prerequisite to building permit.	31-3-14.	Financing of expenses.
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31-3-6.	Rules and regulations of local application.	31-3-16.	Enforcement under local ordinances.
31-3-7.	Compensation for members' attendance at meetings.		
31-3-8.	Records.		

JUDICIAL DECISIONS

Administrative Procedure Act does not apply to county boards of health.

— Administrative Procedure Act, O.C.G.A. Ch. 13, T. 50, does not apply to county boards of health as these boards are not included within the definition of "agency." *Aldridge v. Georgia Hospitality & Travel Ass'n*, 251 Ga. 234, 304 S.E.2d 708 (1983).

Choice of site for public health clinic subject to private rights. —

General power to establish and operate public health clinic does not include authority to ignore private rights in selecting location. *Benton v. Pittard*, 197 Ga. 843, 31 S.E.2d 6 (1944).

Cited in *Brock v. Chappell*, 196 Ga. 567, 27 S.E.2d 38 (1943); *Georgia Dep't of Human Resources v. Demory*, 138 Ga. App. 888, 227 S.E.2d 788 (1976).

OPINIONS OF THE ATTORNEY GENERAL

Power to implement and enforce state health laws and regulations vested in county boards. —

While county and district health agencies have enforcement responsibilities for state health laws and implementing regulations of Department of Human Resources (now the Department of Community Health for these purposes) the department itself has no direct statutory power over manner in which enforcement responsibility is met; instead that power is

vested in county board of health. 1974 Op. Att'y Gen. No. 74-19.

Employees of county boards of health are county employees unless otherwise provided; therefore, for purposes of unemployment compensation, employees of various county boards of health are county employees, and county boards are accordingly responsible for all required reports and contributions for these employees. 1978 Op. Att'y Gen. No. 78-22.

County health personnel not state employees, although state contributes to salaries. — Fact that state makes grants to counties for purpose of defraying cost to county of salaries for its health personnel is not controlling on issue of whether persons are employees of county or state in that direct and ultimate responsibility for such salaries to employees is that of county. 1974 Op. Att'y Gen. No. 74-19.

County board of health employees are employees of county for workers' compensation purposes. — County board of health exists as operating arm of county and the board's employees are for purposes of workmen's (now workers')

compensation classified as county employees. 1960-61 Op. Att'y Gen. p. 590.

Responsibility for workers' compensation coverage may be altered in some instances. — Under existing statutory framework, employees of county boards of health and health districts performing functions for those agencies are employees of the county, not the Department of Human Resources (now the Department of Community Health for these purposes), although there may arise specific instances in which responsibility for workmen's (now workers') compensation coverage is altered because the relationship between the parties is altered. 1974 Op. Att'y Gen. No. 74-19.

RESEARCH REFERENCES

ALR. — Liability of governmental agency for emergency medical or surgical services rendered to poor person without its express authority, 93 ALR 900.

Propriety of state or local government health officer's warrantless search — post-Camara cases, 53 ALR4th 1168.

31-3-1. Creation.

There is established a county board of health in each and every county of this state. (Ga. L. 1914, p. 124, § 2; Code 1933, § 88-201; Ga. L. 1941, p. 317, § 1; Ga. L. 1964, p. 499, § 1.)

JUDICIAL DECISIONS

Cited in Williams v. Board of Educ., 180 Ga. 85, 178 S.E. 148 (1935); Abel v. State,

190 Ga. 651, 10 S.E.2d 198 (1940); Hood v. Burson, 194 Ga. 30, 20 S.E.2d 755 (1942).

OPINIONS OF THE ATTORNEY GENERAL

Criteria for determining appointing authority for position. — In determining whether commissioner, Department of Human Resources (now the Department of Community Health for these purposes), or district health director

is appointing authority for any particular employee, it is necessary to consider the source of creation and funding of the position in question. 1974 Op. Att'y Gen. No. 74-89.

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Health, §§ 8, 9.

C.J.S. — 39A C.J.S., Health and Environment, § 9.

31-3-2. Composition; terms of members.

(a) Each county board of health shall be composed of seven members as follows:

(1) One member shall be the chief executive officer of the governing authority of the county, by whatever name called, or some member designated by said officer; in counties where the governing authority is the judge of the probate court of the county, he shall be the member so appointed;

(2) One member shall be the county superintendent of schools or other school personnel may be designated by said superintendent for such time period as determined by the superintendent but not to exceed such superintendent's contract term;

(3) Except as otherwise provided in this paragraph, one member to be appointed by the governing authority of the county shall be a physician actively practicing medicine in the county and licensed under Chapter 34 of Title 43. If there are fewer than four physicians actively practicing in the county or if there is no physician actively practicing in the county who is willing and able to serve, the governing authority may appoint a person licensed as a nurse or dentist under Chapter 26 or 11, respectively, of Title 43, and actively practicing such profession in the county or any other person having a familiarity with and concern for the provision of medical services in the county;

(4) One member to be appointed by the governing authority of the county shall be a consumer, a representative of a consumer, or a person from an advocacy agency or group, which member will represent on the board the county's consumers of health services;

(5) One member to be appointed by the governing authority of the largest municipality in the county shall be a person interested in promoting public health who is a consumer or a nurse licensed under Chapter 26 of Title 43;

(6) One member to be appointed by the governing authority of the county shall be a consumer member who will represent on the board the county's needy, underprivileged, or elderly community; and

(7) One member shall be the chief executive officer of the governing authority of the largest municipality of the county, by whatever name called, or some member designated by said officer; provided, however, that whenever the legal situs of such largest municipality lies within an adjoining county, the county governing authority may adopt an ordinance providing:

(A) For the selection by the county governing authority of the chief executive officer, by whatever name designated, of the gov-

erning authority of any municipality lying wholly or partially within the county to fill the position on the county board of health authorized by this paragraph;

(B) That the chief executive officer so selected may designate another member of the respective municipal governing authority, whose term of office is the same as that of the chief executive officer, to serve in the place of the chief executive officer;

(C) That the chief executive officer so selected or the chief executive officer's designee shall serve for a term of office as a member of the county board of health concurrent with the term of office as a member of the municipal governing authority;

(D) That a vacancy in the position on the county board of health which is held by the chief executive officer or the chief executive officer's designee shall be filled for the unexpired term by the county governing authority; and

(E) That the first member of the county board of health selected by the county governing authority under such ordinance may take office at any time on or after January 1, 1987, and that the term of office of the member of the county board of health holding office pursuant to this paragraph on December 31, 1986, shall expire on the day immediately preceding the day such first member selected under such ordinance takes office.

(b) No member appointed to the county board of health shall be an employee of the county board of health or of the department.

(c) The terms of the members of county boards of health serving as such on June 30, 1985, and who are serving in membership positions required to be filled by grand jury appointment, shall expire at the end of June 30, 1985, and upon the appointment and qualification of their successors.

(d) The initial term of the member first appointed pursuant to paragraph (3) of subsection (a) of this Code section shall begin July 1, 1985, and shall expire December 31, 1987; the initial term of the member first appointed pursuant to paragraph (4) of subsection (a) of this Code section shall begin July 1, 1985, and shall expire December 31, 1986; the initial term of the member first appointed pursuant to paragraph (6) of subsection (a) of this Code section shall begin July 1, 1984, and expire December 31, 1985; and the initial term of the member first appointed pursuant to paragraph (5) of subsection (a) of this Code section shall begin July 1, 1984, and shall expire December 31, 1986. After these initial terms, members appointed pursuant to paragraphs (3), (4), (5), and (6) of subsection (a) of this Code section shall take office the first day of January immediately following the expiration of the

immediately preceding term of that office and serve terms of six years and until their successors are appointed and qualified. Vacancies in any such membership shall be filled, for the unexpired term and until a successor is appointed and qualified, in the same manner as the original appointment.

(e) Persons holding office as members pursuant to paragraph (1), (2), or (7) of subsection (a) of this Code section shall serve as members while holding their offices as chief executive officer of the governing authority of the county, county superintendent of schools, or chief executive officer of the largest municipality of the county, respectively.

(f) In each county having a population of not less than 400,000 and not more than 500,000 according to the United States decennial census of 1990 or any future such census, the superintendent of the largest municipal school system in the county shall serve in an ex officio capacity as an additional member of the county board of health. (Ga. L. 1914, p. 124, § 2; Code 1933, § 88-201; Code 1933, § 88-202, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1967, p. 544, § 1; Ga. L. 1982, p. 506, § 1; Ga. L. 1984, p. 1325, § 1; Ga. L. 1985, p. 149, § 31; Ga. L. 1986, p. 1242, § 1; Ga. L. 1987, p. 185, § 1; Ga. L. 1992, p. 1217, § 1; Ga. L. 1993, p. 1445, § 1; Ga. L. 1998, p. 855, § 1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1986, “who” was deleted preceding “shall” in paragraphs (a)(4) through (a)(6).

Editor’s notes. — Ga. L. 1993, p. 1445, § 18.1, not codified by the General Assem-

bly, provides: “Nothing in this Act shall be construed to repeal any provision of Chapter 5 of Title 37 of the Official Code of Georgia Annotated, the ‘Community Services Act for the Mentally Retarded.’”

JUDICIAL DECISIONS

Cited in *Abel v. State*, 190 Ga. 651, 10 S.E.2d 198 (1940).

OPINIONS OF THE ATTORNEY GENERAL

Editor’s notes. — In light of the similarity of the statutory provisions, opinions under this Code section, prior to its 1984 amendment, are included in the annotations for this Code section.

Paragraph (a)(7) of O.C.G.A. § 31-3-2 construed. — One member of a county board of health must be the chief executive officer or a member of the governing authority of the largest municipality of the county. 1986 Op. Att’y Gen. No. U86-5.

County manager may not serve on board of health. — Language of this section requires that either the head of

the governing authority serve, or that some other member of the governing authority be designated to serve instead. The chairman of the county commissioners may not appoint a county manager, who is not a county commissioner, to serve on the county board of health. 1980 Op. Att’y Gen. No. 80-25 (decided prior to 1984 amendment; see O.C.G.A. § 31-3-2).

Board member may not be county board of health member. — Person may not serve simultaneously as a member of the Board of Human Resources and as a member of a county board of health. 1985 Op. Att’y Gen. No. 85-28.

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Health, §§ 8, 9.

C.J.S. — 39A C.J.S., Health and Environment, § 9.

31-3-2.1. Option for certain counties to create board of health and wellness by ordinance.

(a) This Code section shall apply only to those counties of this state having a population of 800,000 or more according to the United States decennial census of 2000 or any future such census. To the extent that this Code section conflicts with or is inconsistent with other provisions of this chapter, the provisions of this Code section shall control within the counties in which this Code section is applicable. As used in this Code section, the word “county” means a county to which this Code section is applicable.

(b) In lieu of the county board of health provided for by Code Section 31-3-2, each county shall be authorized to provide by ordinance duly adopted by the governing body of such county for the creation of a county board of health. A county electing to create its board of health by ordinance shall provide for a board of health of seven members, but on and after April 14, 1998, that board of health shall be renamed the county board of health and wellness and the department of health of that county shall be renamed the county department of health and wellness. The change in name of such board and department shall not affect in any way the powers and duties of such board or department or employees thereof. Four of such members shall consist of persons who shall be members of the board of health and wellness by virtue of their offices. Such members shall be the county superintendent of schools; the chairperson or the elective chief executive officer of the governing authority of the county; the superintendent of schools of the largest, by population, independent school system located wholly or partially within the county; and the mayor of the largest municipality, by population, located wholly or partially within the county. The ordinance creating the county board of health may authorize such ex officio members to designate a person to serve in the place of such ex officio members, and a person so designated shall serve for a term concurrent with the term of office of the official who appointed such person, except that the appointing official may remove the person so appointed at any time and within the sole discretion of the appointing official. One of the remaining members shall be appointed by the governing authority of the county and one shall be appointed by the governing authority of the largest, by population, municipality located wholly or partially within the county. Such members so appointed shall not be members of the respective governing authorities making such appointment. The seventh member, who shall be a reputable physician preferably having a

background in public health, shall be appointed by the grand jury of the county. The terms of office, method of filling vacancies, and any other matters not provided for by this subsection relative to the members of the board shall be provided for by the ordinance adopted pursuant to the authority of this Code section.

(c) In counties which adopt an ordinance pursuant to this Code section:

(1) The county board of health and wellness shall have supervision over all matters relating to health and sanitation within the county, with authority to declare and enforce quarantine therein subject to the provisions of law;

(2) All of the power, authority, duties, and responsibilities of county boards of health and wellness in such counties, whether derived from this Code section or any other existing law, shall be exercised and discharged throughout the entire area of said county both inside and outside of the corporate limits of municipalities located in whole or in part therein;

(3) The county attorney or law department of such county shall furnish whatever professional legal assistance may be needed by the county board of health and wellness or other authority for the enforcement of this Code section or other powers of the board of health and wellness by any of the means authorized by law;

(4) The governing authority of the county shall be authorized to adopt a system of rules, regulations, and orders covering health and sanitation within the county, and such system of rules, regulations, and orders may be based on recommendations by the county board of health and wellness. Such rules, regulations, and orders when adopted shall be recorded on the minutes of the governing authority of such county, and a certified copy thereof shall be furnished to the department of health and wellness of such county;

(5) The certificate of attestation of the chairperson or any other member of the county board of health and wellness shall give sufficient validity or authenticity to any copy or transcript of any record, document, paper, or file or other matter or thing in the office of the chairperson or other member or pertaining thereto to admit the same in evidence; and

(6) The board of health and wellness shall not have authority to provide the rules, regulations, or orders to carry out its powers and duties but shall use rules, regulations, and orders adopted by the governing authority of the county and spread upon its minutes. The violation of any such rule, regulation, or order is declared to be a nuisance, per se, and shall be subject to be abated as a nuisance, or

enjoined as such. The violation of any such rules, regulations, or order is declared to be a misdemeanor, and any person, firm, or corporation, upon conviction thereof in any court of competent jurisdiction, shall be punished as for a misdemeanor.

(d) Effective July 1, 1987, the employees of a county board and county department of health and wellness subject to the provisions of this Code section shall be eligible to and shall participate in the state employees' health insurance plan provided for by Article 1 of Chapter 18 of Title 45, and each such employee shall be an "employee," as defined by paragraph (2) of Code Section 45-18-1, for all purposes under said state employees' health insurance plan. Employee and employer contributions required for participation in the state employees' health insurance plan by such employees shall be based on state salaries paid to such employees or paid from state funds to the county for the purpose of paying the compensation of such employees, and salary supplements paid from county funds, as authorized by subsection (e) of this Code section, shall not be considered in the determination of such employee and employer contributions. Employer contributions required for the participation of such employees in the state employees' health insurance plan shall be paid from state funds in the same manner and to the same extent as employer contributions are paid from state funds for participation in such plan by employees of other county boards and departments of health. Employee contributions for such participation shall be withheld and paid as provided by regulations adopted for such purpose by the State Personnel Board.

(e) The governing authority of a county subject to this Code section is authorized to supplement from county funds state compensation paid to employees of its county board or department of health and wellness or to supplement from county funds the amount received by the county from state funds for the purposes of paying the compensation to such employees.

(f) In addition to its general powers to enact laws not in conflict with the Constitution of Georgia and of the United States, this Code section is adopted pursuant to the authority of an amendment to the Constitution of Georgia as set forth at Ga. L. 1951, p. 828, authorizing the General Assembly, by general, local, or special law, to determine and prescribe all the powers, responsibilities, and limitations of certain counties subject to this Code section with respect to health and sanitation. (Code 1981, § 31-3-2.1, enacted by Ga. L. 1985, p. 384, § 1; Ga. L. 1987, p. 169, § 1; Ga. L. 1991, p. 94, § 31; Ga. L. 1998, p. 916, § 1; Ga. L. 2002, p. 1473, § 1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1998, "April 14, 1998" was substituted for "the date this

Code section becomes effective in 1998" in the second sentence of subsection (b) and "state employees' health insurance plan"

was substituted for "State Employees' Health Insurance Plan" four times in subsection (d).

Editor's notes. — The Opinion of the

Attorney General reported at AG Opinion No. 87-27 has been withdrawn and the annotation should therefore be relied upon with extreme caution.

OPINIONS OF THE ATTORNEY GENERAL

Participation by Fulton County employees in health insurance plan. — Statutorily, employees of the Fulton County Health Department legally were

covered under the State Employees' Health Insurance Plan effective July 1, 1987. 1987 Op. Att'y Gen. No. 87-27.

31-3-3. Duty to inform department of membership.

The county board of health shall keep the department informed of the names, addresses, and terms of office of its members. (Code 1933, § 88-208, enacted by Ga. L. 1964, p. 499, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Health, §§ 8, 9.

C.J.S. — 39A C.J.S., Health and Environment, § 9.

31-3-4. Powers.

(a) The county board of health is empowered to:

(1) Establish and adopt bylaws for its own governance. Meetings shall be held no less frequently than quarterly;

(2) Exercise responsibility and authority in all matters within the county pertaining to health unless the responsibility for enforcement of such is by law that of another agency;

(3) Take such steps as may be necessary to prevent and suppress disease and conditions deleterious to health and to determine compliance with health laws and rules, regulations, and standards adopted thereunder;

(4) Adopt and enforce rules and regulations appropriate to its functions and powers, provided such rules and regulations are not in conflict with the rules and regulations of the department. Such rules and regulations must be reasonably adapted to the purposes intended and must be within the purview of the powers and duties imposed upon the county board of health by this chapter;

(5) Receive and administer all grants, gifts, moneys, and donations for purposes pertaining to health pursuant to this chapter;

(6) Make contracts and establish fees for the provision of public health services provided by county boards of health, including but not

limited to environmental health services, which fees may be charged to persons or to establishments and premises within the county for inspection of such establishments, premises, structures and appurtenances thereto, or for other county board of health services. All such fees may be used to defray costs of providing such local services and shall supplement but not replace state or federal funding. No person shall be denied services on the basis of that person's inability to pay. The scope of services, operating details, contracts, and fees approved by the county board of health shall also be approved by the district director of health. No fees for environmental health services may be charged unless the schedule of fees for such services has been approved by the county governing authority;

(7) Contract with the Department of Public Health or other agencies for assistance in the performance of its functions and the exercise of its powers and for supplying services which are within its purview to perform, provided that such contracts and amendments thereto shall have first been approved by the department. In entering into any contracts to perform its functions and to exercise its powers, and for supplying services which are within its purview to perform, any county board of health or any health district created under the authority of Code Section 31-3-15 shall be considered an agency and such agency shall have the authority to contract with any other county board of health; combination of county boards of health; any other health district; public or private hospitals; hospital authorities; medical schools; training and educational institutions; departments and agencies of the state; county or municipal governments; persons, partnerships, corporations, and associations, public or private; the United States government or the government of any other state; or any other legal entity; and

(8) The county board of health in each county of this state having a population of 400,000 or more according to the United States decennial census of 1990 or any future such census is authorized to develop and implement activities for the prevention of injuries and incorporate injury prevention measures in rules and regulations which are within the purview of the county board of health to promulgate which shall be effective when adopted by an ordinance of the county governing authority.

(b) Notwithstanding the provisions contained in subsection (a) of this Code section and Code Section 31-3-5, nothing contained in this Code section or Code Section 31-3-5 shall be construed to empower a county board of health to adopt any rules or regulations or provisions to enforce any rules or regulations pertaining to matters provided for or otherwise regulated pursuant to the provisions of Part 1 of Article 2 of Chapter 8 of Title 12, the "Georgia Comprehensive Solid Waste Management Act,"

as now or hereafter amended, or the rules and regulations promulgated pursuant to such part. (Code 1933, § 88-204, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1966, p. 380, § 1; Ga. L. 1976, p. 1420, § 1; Ga. L. 1978, p. 2031, § 1; Ga. L. 1984, p. 1325, § 2; Ga. L. 1985, p. 419, § 1; Ga. L. 1988, p. 1757, § 1; Ga. L. 1992, p. 1204, § 1; Ga. L. 1992, p. 3308, § 1.1; Ga. L. 1993, p. 1445, § 2; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214.)

The 2011 amendment, effective July 1, 2011, substituted “Department of Public Health” for “Department of Community Health” in the first sentence of paragraph (a)(7).

Cross references. — Regulation of restaurants, taverns, and other establishments by county boards of health and Department of Public Health, § 26-2-370 et seq. Inspection of funeral establish-

ments by county boards of health, § 43-18-75.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1992, “such part” was substituted for “such Act” at the end of subsection (b).

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

JUDICIAL DECISIONS

County not “employer” within meaning of federal civil rights statute. — Position of mental health center service coordinator at a county health department is created by the State of Georgia and is governed by the Georgia State Merit System of Personnel Administration for the Georgia Department of Human Resources (now the Department of Community Health for these purposes) with respect to the terms and conditions of employment, including hiring, termination, promotion, demotion, and wage rates. A fortiori, the county is not an “employer” within the meaning of Title VII of the federal Civil Rights Act of 1964. *Lewis v. DeKalb County*, 569 F. Supp. 11 (N.D. Ga. 1983).

Provisions of paragraph (a)(3) do not include matters relating to public safety. *Vinson v. Howe Bldrs. Ass’n of Atlanta*, 233 Ga. 948, 213 S.E.2d 890 (1975).

Safety regulations to prevent traumatic death and drowning not within board’s powers. — Traumatic death or drowning is not deleterious to health

within the meaning of this section and safety regulations to prevent those occurrences are not within the scope of the board’s powers. *Vinson v. Howe Bldrs. Ass’n*, 233 Ga. 948, 213 S.E.2d 890 (1975) (see O.C.G.A. § 31-3-4).

Authorized fees. — Legislature, by the legislature’s use of the language “other public health services” in former paragraph (6) of O.C.G.A. § 31-3-4, intended to authorize fee collection only for those personal health care services, such as nursing homes services and mental health care, which are provided by county health boards to individual citizens. *Aldridge v. Georgia Hospitality & Travel Ass’n*, 251 Ga. 234, 304 S.E.2d 708 (1983) (decided prior to 1984 amendment).

Assessment of fees for inspection of public hotels, motels, and restaurants is simply not within the contemplation of former paragraph (6) of O.C.G.A. § 31-3-4. *Aldridge v. Georgia Hospitality & Travel Ass’n*, 251 Ga. 234, 304 S.E.2d 708 (1983) (decided prior to 1984 amendment).

Cited in *Rice v. Oaks Investors II*, 292 Ga. App. 692, 666 S.E.2d 63 (2008).

OPINIONS OF THE ATTORNEY GENERAL

ANALYSIS

GENERAL CONSIDERATION

FEES FOR SERVICES

CONTRACTS PURSUANT TO CODE SECTION

General Consideration

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, § 88-203, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section.

County boards' authority regarding provision of home health care services. — County boards of health have authority to make contracts and establish and accept fees for purpose of providing home health care services, including service of physical therapy, for chronically ill and aged. 1970 Op. Att'y Gen. No. U70-215.

Boards authorized to serve patients. — County boards of health clearly are created for public health purposes, and the boards have authority to serve patients among other activities. 1987 Op. Att'y Gen. No. U87-19.

General laws regulating solid waste handling do not preclude county regulation. — Existence of general laws relating to regulation of solid waste handling and management does not necessarily preclude adoption of regulations on same subject by county boards of health, provided such regulations have a reasonable relation to protection of health of citizenry of county and are not prohibited by express or implied language in Solid Waste Management Act or rules and regulations promulgated thereunder. 1976 Op. Att'y Gen. No. 76-17.

Rules and regulations of county boards of health prevail over municipal regulations. 1954-56 Op. Att'y Gen. p. 571 (decided under former Code 1933, § 88-203 prior to amendment of Chapter 88-2 by Ga. L. 1964, p. 499, § 1).

Department's discretion to withhold state funds from a county. — State Health Department (now the Department of Community Health for these

purposes) has power to withhold at the department's discretion state funds from a county on a variety of grounds, including refusal of county commissioners to approve budget submitted by county board of health, and can refuse to increase salaries of board of health's staff in line with State Personnel Board rules. 1965-66 Op. Att'y Gen. No. 66-165.

Fees for Services

Right of county boards to fees for health services rendered by employee. — Since the county board of health has the general authority to establish and accept fees for purpose of providing health care services for the ill, it can therefore set, collect, and retain fees for these services where rendered by an employee. 1975 Op. Att'y Gen. No. 75-22.

County board shall maintain funds separate from general county funds. — Ga. L. 1964, p. 499, § 1, and Ga. L. 1966, p. 380, § 1 (see O.C.G.A. §§ 31-3-4, 31-3-8, and 31-3-14) indicate that county board of health shall maintain the county's funds separate from those of county, rather than that the county's funds should be paid into general county funds. 1971 Op. Att'y Gen. No. U71-120.

County boards need not pay money received for services to county commissioner or treasury. — County boards of health are not required to pay over money received for services performed by board to county commissioners or county treasury. 1971 Op. Att'y Gen. No. U71-120.

Contracts Pursuant to Code Section

Purpose of the contract must come within parameters of grant of contracting power given to county board of health. 1980 Op. Att'y Gen. No. 80-52.

Part of authority to contract is authority to give consideration. — Since both the counties and the department

have authority to contract, it was self-evident that they have the authority to give consideration for the contract since, pursuant to former Code 1933, § 20-301, consideration was essential to a contract and a contract without consideration was unenforceable. 1975 Op. Att'y Gen. No. 75-22.

Department's consideration for contract entered may be services of state employee. 1975 Op. Att'y Gen. No. 75-22.

Consideration of county in form of services to state. — Consideration given by county for contract may be rendering of services to state which county would not otherwise be obligated to perform, or, if county is already obligated to perform

such services, some other consideration such as money may be substituted. 1975 Op. Att'y Gen. No. 75-22.

County board of health, in providing consideration to support a contract, may provide personal services. 1980 Op. Att'y Gen. No. 80-52.

Department of Human Resources may provide employee for private nonprofit corporation. — Department of Human Resources (now the Department of Community Health for these purposes) may contractually obligate itself to provide, through a county board of health, one of its employees to work for a private nonprofit corporation which furnishes mental health services. 1980 Op. Att'y Gen. No. 80-52.

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Health, §§ 2, 8 et seq.

C.J.S. — 39A C.J.S., Health and Environment, § 4 et seq.

ALR. — Right of one detained pursuant

to quarantine to habeas corpus, 2 ALR 1542.

Regulation of business of tattooing, 81 ALR3d 1212.

31-3-5. Functions.

(a) Subject to the provisions of Code Section 31-2A-11 and subsection (b) of this Code section, each county board of health shall have and discharge, within its jurisdiction, subject to any valid local Act which shall remain in force and effect, the following functions:

(1) To determine the health needs and resources of its jurisdiction by research and by collection, analysis, and evaluation of all data pertaining to the health of the community;

(2) To develop, in cooperation with the department, programs, activities, and facilities responsive to the needs of its area;

(3) To secure compliance with the rules and regulations of the department that have local application; and

(4) To enforce, or cause enforcement of, all laws pertaining to health unless the responsibility for the enforcement of such laws is that of another agency.

(b) Each county board of health shall have the power and duty to adopt regulations providing standards and requirements governing the installation of on-site sewage management systems within the incorporated and unincorporated area of the county, subject to the provisions of Code Section 31-2A-11, any rules and regulations promulgated under

Code Section 31-2A-11, and subsection (d) of this Code section. Such regulations shall include and be limited to the following:

(1) Specifying the locations within the incorporated and unincorporated area of the county where on-site sewage management systems may be installed;

(2) Specifying the minimum lot size or land area which may be served by an on-site sewage management system based on scientific data regarding on-site sewage management systems;

(3) Specifying the types of residences, buildings, or facilities which may be served by on-site sewage management systems;

(4) Issuing permits for the installation of on-site sewage management systems prior to such installation;

(5) Inspecting on-site sewage management system installations prior to the completion of the installation; and

(6) Providing for ongoing maintenance of such systems, except for nonmechanical residential sewage management systems.

(c) Nothing in this Code section or in Code Section 31-3-5.1 shall limit the power of a county or municipal governing authority to exercise its zoning powers or to establish minimum lot sizes larger than the minimum lot sizes specified pursuant to subsection (b) of this Code section.

(d)(1) Any person may register with the department to conduct soil investigations and prepare soil reports of a site within the state for an on-site sewage management system who meets any one of the following criteria:

(A) Qualifies as a soil classifier as defined in subparagraph (B) of paragraph (3) of this subsection;

(B) Holds a valid certificate of registration as a professional engineer issued pursuant to Chapter 15 of Title 43 and is practicing within his or her area of engineering competency;

(C) Holds a valid certificate of registration as a registered geologist issued pursuant to Chapter 19 of Title 43 and is practicing within his or her area of geologic competency; or

(D) Is a soil and water conservation technician as defined in subparagraph (A) of paragraph (3) of this subsection.

(2) Upon the submission of an evaluation of the suitability of a site within the state for an on-site sewage management system by such a person who is registered with the department, the county board of health shall be required to accept the evaluation unless such evalu-

ation is found by the county board of health to be deficient or questionable. If the county board of health finds such evaluation to be deficient or questionable, the board shall, within three working days of making such finding, issue a written determination stating all deficiencies and all measures needed to correct the deficiencies. A copy of this determination shall be provided to the state director of environmental health.

(3) As used in this subsection, the term:

(A) "Soil and water conservation technician" means a person employed as a soil and water conservation technician by a soil and water conservation district provided for in Article 2 of Chapter 6 of Title 2.

(B) "Soil classifier" means a person who:

(i) Holds at least a bachelor of science degree from an accredited college or university with a major in soil science or a related field of science. This degree shall include 30 semester credit hours or equivalent quarter credit hours in the biological, physical, chemical, and earth sciences with a minimum of 15 semester credit hours or equivalent quarter hours in soil science courses meeting the following distribution:

(I) A minimum of one course in soil classification, morphology, genesis, and mapping; and

(II) The remaining soil science credits must be in at least three of the following eight categories: introductory soil science; soil fertility; soil microbiology; soil chemistry; soil physics; soil management, soils and land use, or soils and the environment; soil mineralogy; or a three credit maximum in independent study, geology, or hydrology; and

(ii) Has at least four years of verifiable full-time or equivalent part-time experience under the supervision of a soil classifier who has met the education and experience requirements provided in this subparagraph. Such experience must be obtained after meeting all educational requirements defined in this subparagraph and must have been spent actively mapping, identifying, and classifying soil features and interpreting the influence of soil features on soil uses including, but not limited to, conducting soil investigations for determining the suitability of sites for on-site sewage management systems as approved by the department's soil classifiers advisory committee; and

(iii) Has successfully passed a written examination pertaining to site investigations for on-site sewage management systems administered or approved by the department. (Code 1933,

§ 88-203, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1985, p. 149, § 31; Ga. L. 1997, p. 708, § 2; Ga. L. 2000, p. 549, § 1; Ga. L. 2003, p. 302, § 1; Ga. L. 2009, p. 453, § 1-10/HB 228; Ga. L. 2011, p. 705, § 3-3/HB 214.)

The 2011 amendment, effective July 1, 2011, substituted “Code Section 31-2A-11” for “Code Section 31-2-12” throughout this Code section.

Cross references. — Powers and duties of county boards of health with regard to providing of mental health and developmental disabilities services, T. 37, C. 2.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2000, subparagraphs (d)(1)(A) and (d)(1)(B) (now subparagraphs (d)(3)(A) and (d)(3)(B)) were placed in alphabetical order.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

JUDICIAL DECISIONS

County not “employer” within meaning of federal civil rights statute. — Position of mental health center service coordinator at a county health department is created by the State of Georgia and is governed by the Georgia State Merit System of Personnel Administration for the Georgia Department of Human Resources (now the Department of Community Health for these purposes)

with respect to the terms and conditions of employment, including hiring, termination, promotion, demotion, and wage rates. A fortiori, the county is not an “employer” within the meaning of Title VII of the federal Civil Rights Act of 1964. *Lewis v. DeKalb County*, 569 F. Supp. 11 (N.D. Ga. 1983).

Cited in *In re Carter*, 288 Ga. App. 276, 653 S.E.2d 860 (2007).

OPINIONS OF THE ATTORNEY GENERAL

Power to implement and enforce state health laws and regulations vested in county boards. — While county and district health agencies have enforcement responsibilities for state health laws and implementing regulations of Department of Human Resources (now the Department of Community Health for these purposes), the department itself has no direct statutory power over manner in which enforcement responsibility is met; instead that power is vested in county board of health. 1974 Op. Att’y Gen. No. 74-19.

Boards authorized to serve pa-

tients. — County boards of health clearly are created for public health purposes and the boards have authority to serve patients among other activities. 1987 Op. Att’y Gen. No. U87-19.

Criteria for determining appointing authority for position. — In determining whether commissioner, Department of Human Resources, or district health director is appointing authority for any particular employee, it is necessary to consider the source of creation and funding of the position in question. 1974 Op. Att’y Gen. No. 74-89.

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Health, § 10 et seq.

C.J.S. — 39A C.J.S., Health and Environment, § 10.

31-3-5.1. Conformity prerequisite to building permit.

No building permit for the construction of any residence, building, or other facility which is to be served by a sewage management system shall be issued by or pursuant to the authority of a county governing authority unless the sewage management system installation permit is in conformity with standards contained in Code Section 31-2A-11 for sewage management systems. No person, firm, corporation, or other entity shall install a sewage management system in violation of the provisions of Code Section 31-2A-11 or the regulations of a county board of health adopted pursuant to the authority of Code Section 31-3-5. Each county governing authority shall provide by ordinance or resolution for the enforcement of the provisions of this Code section. (Code 1981, § 31-3-5.1, enacted by Ga. L. 1986, p. 227, § 1; Ga. L. 1992, p. 3308, § 2; Ga. L. 1994, p. 1777, § 2; Ga. L. 1997, p. 708, § 3; Ga. L. 2009, p. 453, § 1-10/HB 228; Ga. L. 2011, p. 705, § 3-3/HB 214.)

The 2011 amendment, effective July 1, 2011, substituted “Code Section 31-2A-11” for “Code Section 31-2-12” in the first and second sentences.

Cross references. — Building stan-

dards and requirements generally, T. 8, C. 2.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

31-3-5.2. Definition of “gray water”; lawful use.

(a) As used in this Code section, the term “gray water” means waste water discharged from residential lavatories, bathtubs, showers, clothes washers, and laundry trays.

(b) Private residential direct reuse of gray water shall be lawful if the following conditions are met:

(1) Gray water originating from the residence shall be used and contained within the property boundary for household gardening, composting, lawn watering, or landscape irrigation;

(2) Gray water shall not be used for irrigation of food plants;

(3) The gray water shall not contain hazardous chemicals derived from activities such as cleaning car parts, washing greasy or oily rags, or disposing of waste solutions from home photography laboratories or similar hobbyist or home occupational activities;

(4) The application of gray water shall be managed to minimize standing water on the surface;

(5) The application of gray water shall be outside of a floodway;

(6) The gray water shall not contain water used to wash diapers or similarly soiled or infectious garments unless the gray water is disinfected before irrigation; and

(7) The gray water shall be applied only by hand watering using garden watering cans or similar hand-held containers.

(c) County boards of health shall adopt the provisions of subsection (b) of this Code section by regulation. Local governing bodies shall be authorized to punish violations of said regulations as local ordinance violations, provided that the penalty for each such violation shall not exceed a \$100.00 fine. (Code 1981, § 31-3-5.2, enacted by Ga. L. 2008, p. 720, § 1/SB 463; Ga. L. 2009, p. 8, § 31/SB 46.)

31-3-6. Rules and regulations of local application.

The county board of health shall have authority to establish rules and regulations which apply to all citizens and premises of the county or to specified areas and citizens therein without regard to the remainder of the county. (Code 1933, § 88-205, enacted by Ga. L. 1964, p. 499, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Health, § 8 et seq.

C.J.S. — 39A C.J.S., Health and Environment, §§ 9, 10.

31-3-7. Compensation for members' attendance at meetings.

Members of county boards of health shall be paid not more than \$25.00 per day for their attendance at meetings of the board, provided funds therefor have been established by budget and are available from funds allocated to that purpose. (Code 1933, § 88-206, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1989, p. 312, § 1.)

RESEARCH REFERENCES

C.J.S. — 39A C.J.S., Health and Environment, § 14.

31-3-8. Records.

The county board of health shall record and preserve true and correct minutes of its proceedings in a book kept for that purpose and shall maintain or cause to be maintained, unless maintained by the governing authority of the county, accurate double entry accounting records including but not limited to:

(1) Prenumbered duplicates of receipts issued for funds received showing the source of such funds; and

(2) Records and financial reports including a general ledger maintained in accordance with generally accepted principles of accounting and in accordance with such standards as may be prescribed by the

governing authority of the county and the department. Such records shall show all receipts and disbursements, identifying each item and, in the case of disbursements, listing to whom paid, dates, amounts, and objects of expenditure. All accounting records shall be subject to any audits made of general county financial operations and shall be made available for the purpose of such audits. (Code 1933, § 88-207, enacted by Ga. L. 1964, p. 499, § 1.)

Cross references. — Requirements of audit reports generally, § 36-60-8.

OPINIONS OF THE ATTORNEY GENERAL

Code section indicates county board shall maintain funds separate from general county funds. — Ga. L. 1964, p. 499, § 1, and Ga. L. 1966, p. 380, § 1, indicate that county board of health shall maintain the board's funds separate from those of county, rather than that the board's funds should be paid into general county funds. 1971 Op. Att'y Gen. No. U71-120.

RESEARCH REFERENCES

C.J.S. — 39A C.J.S., Health and Environment, §§ 20 et seq., 39.

31-3-9. Office quarters and equipment.

The governing body of the county shall provide the county board of health with quarters and equipment sufficient for its operation. (Code 1933, § 88-209, enacted by Ga. L. 1964, p. 499, § 1.)

JUDICIAL DECISIONS

Cited in *Lewis v. DeKalb County*, 569 F. Supp. 11 (N.D. Ga. 1983).

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Health, § 8 et seq.

C.J.S. — 39A C.J.S., Health and Environment, §§ 9, 10.

31-3-10. Legal representation.

The county board of health may require the legal services of the county attorney or, its budget permitting, may employ other counsel to assist in performing its duties. (Code 1933, § 88-210, enacted by Ga. L. 1964, p. 499, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Health, §§ 8 et seq., 19, 20.

C.J.S. — 39A C.J.S., Health and Environment, §§ 9, 10.

ALR. — Power of fire, water, or health commissioners, or the like, to employ counsel, 2 ALR 1212.

31-3-11. Appointments of director and staff; supervision.

(a) The county board of health shall appoint as its chief executive officer a director who shall be a physician licensed to practice medicine under Chapter 34 of Title 43 and who otherwise meets the requirements of the rules of the State Personnel Board. The director, subject to the approval of the county board of health, shall designate aides and assistants pursuant to the budget adopted by the county board of health in accordance with Code Section 31-3-14.

(b) Each employee of a county board of health whose duties include enforcing those environmental health laws of this state or environmental health regulations of that board of health relating to septic tanks or individual sewage management systems shall be subject to the direction and supervision of the district director of environmental health, although the hiring and termination from employment of such employee shall be subject to the director of that county board of health. The employment activities of such employee with regard to environmental health shall be reported to the director of environmental health through the district director of environmental health at least quarterly. The director of environmental health may recommend to that director of that county board of health personnel actions, including but not limited to termination, which the director of environmental health deems appropriate for such employee's failure or refusal to comply with the direction of the director of environmental health in the carrying out of the environmental health employment duties of such employee. As used in this subsection, the term "director of environmental health" means the director of environmental health of the Department of Public Health. (Code 1933, § 88-211, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 2000, p. 549, § 2; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2009, p. 745, § 2/SB 97; Ga. L. 2011, p. 705, § 6-1/HB 214; Ga. L. 2012, p. 446, § 2-35/HB 642.)

The 2011 amendment, effective July 1, 2011, substituted "Department of Public Health" for "Division of Public Health of the Department of Community Health" in the last sentence of subsection (b).

The 2012 amendment, effective July 1, 2012, substituted "rules of the State Personnel Board" for "State Personnel Ad-

ministration" in the first sentence of subsection (a).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2000, "environmental" was substituted for "environment" near the end of the second sentence of subsection (b).

Editor's notes. — Ga. L. 2012, p. 446,

§ 3-1/HB 642, not codified by the General Assembly, provides that: "Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

JUDICIAL DECISIONS

County not "employer" within meaning of federal civil rights statute. — Position of mental health center service coordinator at a county health department is created by the State of Georgia and is governed by the Georgia State Merit System of Personnel Administration for the Georgia Department of Human Resources (now the Department

of Community Health for these purposes) with respect to the terms and conditions of employment including hiring, termination, promotion, demotion, and wage rates. A fortiori, the county is not an "employer" within the meaning of Title VII of the federal Civil Rights Act of 1964. *Lewis v. DeKalb County*, 569 F. Supp. 11 (N.D. Ga. 1983).

OPINIONS OF THE ATTORNEY GENERAL

Criteria for determining appointing authority for position. — In determining whether commissioner, Department of Human Resources (now the Department of Community Health for these purposes), or district health director

is appointing authority for any particular employee, it is necessary to consider the source of creation and funding of the position in question. 1974 Op. Att'y Gen. No. 74-89.

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Health, §§ 8 et seq., 25, 26.

C.J.S. — 39A C.J.S., Health and Environment, § 9 et seq.

31-3-12. Duties of director.

Subject to the policies and directives of the county board of health and the policies and directives of the multiple county districts served, the director shall perform the functions and exercise the powers set forth in this chapter except the power to adopt bylaws and to adopt rules and regulations and may delegate the powers and authority conferred, or any part thereof, to one or more individuals as he may deem appropriate. The director shall devote his entire time to the service of the county board of health and to the multiple county districts, where created, and shall be vigilant in procuring compliance with its rules and regulations and with Georgia health laws and rules and regulations adopted thereunder that have application within the county and district. He shall make reports to the county board of health and the agency in charge of the multiple county district in such manner and form and with such frequency as required by it and shall also report to the

department in such manner, detail, and form as the department may specify. (Code 1933, § 88-212, enacted by Ga. L. 1964, p. 499, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Health, § 25 et seq.

C.J.S. — 39A C.J.S., Health and Environment, § 9 et seq.

ALR. — Personal liability of health officer, 24 ALR 798.

31-3-12.1. Contracts between county boards; authorization for and provisions applicable to county board of health serving as community service board.

(a) In addition to any other power authorized by law, the county governing authority may authorize the county board of health to enter into a contract with the Department of Behavioral Health and Developmental Disabilities or a community mental health, developmental disabilities, and addictive diseases service board created under Chapter 2 of Title 37 to provide certain mental health, developmental disabilities, and addictive diseases services based on the contractual agreement between the parties. In the event that the county governing authority exercises the authority granted by this subsection, the county board of health shall appoint a director for mental health, developmental disabilities, and addictive diseases or a supervisor of the specific service which is being provided by the county board of health, whichever is applicable, who shall meet the requirements established by this subsection. The director for mental health, developmental disabilities, and addictive diseases, or the service supervisor, shall not be required to be a physician and shall be a person other than the director of the county board of health appointed pursuant to Code Section 31-3-11. Further, such director for mental health, developmental disabilities, and addictive diseases or such supervisor of the specific service shall report directly to the county board of health and shall have no formal reporting relationship with the director of the county board of health.

(b) Pursuant to subsection (e) of Code Section 37-2-6, a county governing authority may authorize the membership of a county board of health to serve as the membership of a community mental health, developmental disabilities, and addictive diseases service board, provided that the county governing authority, the county board of health, and any other affected county governing authority act pursuant to subsection (e) of Code Section 37-2-6. If the membership of a county board of health exercises the authority granted pursuant to this subsection and Chapter 2 of Title 37 to serve as the membership of a community service board, the membership of the county board of health shall constitute the membership of the community service board and, at

any time that such members are exercising duties and powers related to mental health, developmental disabilities, and addictive diseases, the community service board shall be an independent agency and shall operate in accordance with the provisions of Title 37 as a community service board. Notwithstanding any provisions of law to the contrary, a community service board and a county board of health which have the same membership may contract with each other, provided that any such contract is approved by the department and the Department of Behavioral Health and Developmental Disabilities prior to adoption. (Code 1981, § 31-3-12.1, enacted by Ga. L. 1993, p. 1445, § 3; Ga. L. 1994, p. 437, § 1; Ga. L. 2002, p. 1324, § 1-3; Ga. L. 2006, p. 310, § 1/HB 1223; Ga. L. 2009, p. 453, § 3-9/HB 228.)

Editor's notes. — Ga. L. 1993, p. 1445, § 18.1, not codified by the General Assembly, provides: "Nothing in this Act shall be construed to repeal any provision of Chapter 5 of Title 37 of the Official Code of Georgia Annotated, the 'Community Services Act for the Mentally Retarded.'"

Ga. L. 2006, p. 310, § 10/HB 1223, not codified by the General Assembly, provides that: "Nothing in this Act shall be construed to affect or abate any right accrued or vested prior to July 1, 2006, or any action or proceeding commenced prior to July 1, 2006, under any law amended or repealed by this Act."

Ga. L. 2006, p. 310, § 11/HB 1223, not codified by the General Assembly, provides that: "This Act shall become effective July 1, 2006, except that those provisions which authorize community service boards to amend their bylaws and authorize county governing authorities to appoint no sooner than May 1, 2006, any community service board members to take office on July 1, 2006, shall become effective upon the approval of this Act by the Governor or upon its becoming law without such approval." This Act was approved by the Governor on April 21, 2006.

31-3-13. Declaration of public policy; contracts for assistance to boards.

No population area or unit of this state shall be without health services responsive to its needs. Because it is recognized that all counties are not equally able to effectuate this policy, a county board of health may contract for assistance in the performance of its functions and exercise of its powers, provided that such proposed contract and any amendments thereto shall have first been approved by the department. (Code 1933, § 88-213, enacted by Ga. L. 1964, p. 499, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Health, §§ 19, 20.

C.J.S. — 39A C.J.S., Health and Environment, §§ 7 et seq., 16, 17, 26.

31-3-14. Financing of expenses.

The county board of health, at a regular or called meeting, at a time appropriate to the fiscal operation of the county, shall determine and fix the amount of money needed for the fiscal or calendar year, as the case

may be, in accordance with a budget itemizing anticipated income and expenditure; the budget shall include any unobligated moneys carried over from the current period and funds to be made available from sources other than county taxes. The expenditures anticipated, after applying credits, shall be certified by the county board of health, with a copy of the budget, to the taxing authority of the county, which may fix and levy a tax rate sufficient to raise such amount at the same time and in the same manner prescribed for levying taxes for other county purposes, provided the taxing authority of the county deems the budget reasonable. If, however, the taxing authority of the county should deem the budget unreasonable, it shall promptly return the budget to the county board of health with its objections attached thereto for the purpose of resubmission. (Code 1933, § 88-214, enacted by Ga. L. 1964, p. 499, § 1.)

OPINIONS OF THE ATTORNEY GENERAL

Expense of confining rabid animals to be included in budget. — Local county boards of health should prescribe rules for prevention and control of rabies by providing for vaccination, tagging, and certification of dogs and for confinement of any animal which exhibits signs of rabies; the cost of such confinement would be an expense of the county board of health to be included in the board's budget which is submitted to local taxing authorities. 1965-66 Op. Att'y Gen. No. 65-21.

County board shall maintain funds separate from general county funds. — Ga. L. 1964, p. 499, § 1, and Ga. L. 1966, p. 380, § 1 indicate that county board of health shall maintain the board's funds separate from those of county, rather than that the board's funds should be paid into general county funds. 1971 Op. Att'y Gen. No. U71-120.

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Health, §§ 17, 18.

C.J.S. — 39A C.J.S., Health and Environment, §§ 95, 96.

31-3-15. Establishment of health districts.

The department is authorized, with the consent of the boards of health and the county authorities of the counties involved, to establish health districts composed of one or more counties. The county boards of health of the constituent counties shall, at the call of the commissioner, meet in joint session to approve the selection of a director appointed by the commissioner to serve such boards in common. A county board of health is authorized to appoint one of its members to represent the board at a joint meeting for this purpose. The director shall be a physician who is licensed to practice medicine under Chapter 34 of Title 43 and who otherwise meets the requirements of the rules of the State Personnel Board. The district director shall have the same powers, duties, and responsibility as a director serving a single county board of

health. To further the purposes of this Code section, county boards of health may contract with each other for the provision of multicounty services and also exercise any additional powers as authorized by paragraph (7) of subsection (a) of Code Section 31-3-4; and in the performance of such contracts a county board of health may utilize its employees in other counties. (Code 1933, § 88-215, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1978, p. 2031, § 2; Ga. L. 2009, p. 745, § 2/SB 97; Ga. L. 2012, p. 446, § 2-36/HB 642.)

The 2012 amendment, effective July 1, 2012, substituted “composed” for “comprised” in the first sentence, substituted “rules of the State Personnel Board” for “State Personnel Administration” in the fourth sentence, and inserted “of subsection (a)” in the last sentence.

Editor’s notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: “Personnel, equipment, and facilities that were assigned to the State Personnel Administra-

tion as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act.” This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: “Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90.”

JUDICIAL DECISIONS

Cited in *Lewis v. DeKalb County*, 569 F. Supp. 11 (N.D. Ga. 1983).

OPINIONS OF THE ATTORNEY GENERAL

Staff member appointed by director need not be licensed physician if not practicing medicine. — Staff member appointed by director of a health district, including director of a subordinate administrative unit, need not be a licensed physician, as long as the staff member does not engage in any activity which constitutes the practice of medicine and, in case of a position affected by the State Merit System of Personnel Administration, such licensure is not a requirement of the position the employee holds. 1978 Op. Att’y Gen. No. 78-9.

Criteria for determining appointing authority for position. — In determining whether commissioner, Depart-

ment of Human Resources (now the Department of Community Health for these purposes), or district health director is appointing authority for any particular employee, it is necessary to consider the source of creation and funding of the position in question. 1974 Op. Att’y Gen. No. 74-89.

Construction with § 45-20-2. — O.C.G.A. § 31-3-15 does not require that the position of District Health Officer be placed in the classified service of the State Merit System and, accordingly, there is no conflict between O.C.G.A. §§ 31-3-15 and 45-20-2, which defines classified and unclassified service. 1985 Op. Att’y Gen. No. 85-1.

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Health, §§ 8, 9.

C.J.S. — 39A C.J.S., Health and Environment, §§ 7 et seq., 26.

31-3-16. Enforcement under local ordinances.

It is not the intent of this chapter to abrogate the terms of a municipal charter or laws of local application which authorize a governing body within the county to provide penalties for a violation of a valid rule and regulation of the county board of health. (Code 1933, § 88-218, enacted by Ga. L. 1964, p. 499, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Health,
§ 8 et seq.

C.J.S. — 39A C.J.S., Health and Envi-
ronment, §§ 7 et seq., 26.

CHAPTER 4

COUNCIL ON MATERNAL AND INFANT HEALTH

Sec.

31-4-1 through 31-4-3 [Repealed].

31-4-1 through 31-4-3.

Reserved. Repealed by Ga. L. 2009, p. 453, § 2-15/HB 228, effective July 1, 2009.

Editor's notes. — This chapter consisted of Code Sections 31-4-1 through 31-4-3 and was based on Ga. L. 1972, p. 635, §§ 1, 2, 3; Ga. L. 1974, p. 269, § 1; Ga. L. 1978, p. 1763, § 1; Ga. L. 1979, p. 766, § 1; Ga. L. 1982, p. 3, § 31.

CHAPTER 5

ADMINISTRATION AND ENFORCEMENT

Article 1

Sec.

General Provisions

Sec.

- 31-5-1. Adoption of rules and regulations.
- 31-5-2. Hearings.
- 31-5-3. Appeals.
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- 31-5-5. (Effective until January 1, 2013. See note.) Contents of official record as evidence; classification of privileged materials.
- 31-5-5. (Effective January 1, 2013. See note.) Classification of confidential and privileged materials.
- 31-5-6. Distribution of rules.
- 31-5-7. Application of this chapter.
- 31-5-8. Penalty for violations of the provisions of this title.
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31-5-10.

tions of the provisions of this title; supersedeas; attachment for contempt; injunctions to abate public nuisances; where actions may be instituted.

Notifying department or board of health of conditions on private property which are injurious to the public; inspection warrant; notice to owner and occupant; abatement.

Article 2

Inspection Warrants

31-5-20.

31-5-21.

31-5-22.

31-5-23.

31-5-24.

"Inspection warrant" defined.

Persons who may obtain inspection warrants; authorization of searches and inspections of property.

Issuance; grounds.

Contents.

Exclusion of evidence obtained.

Cross references. — Establishment and enforcement of sanitary regulations pertaining to restaurants, taverns and other establishments, § 26-2-370 et seq.

Similar provisions regarding administration and enforcement of mental health laws, T. 37, C. 1. Administrative procedure generally, T. 50, C. 13.

JUDICIAL DECISIONS

County boards of health. — Administrative Procedure Act, O.C.G.A. Ch. 13, T. 50, does not apply to county boards of health as these boards are not included

within the definition of "agency." *Aldridge v. Georgia Hospitality & Travel Ass'n*, 251 Ga. 234, 304 S.E.2d 708 (1983).

ARTICLE 1

GENERAL PROVISIONS

31-5-1. Adoption of rules and regulations.

All rules and regulations of the Department of Public Health and any county board of health shall be adopted after due notice to and hearing by persons and parties affected thereby; and such rules and regulations

shall be maintained in a book kept for that purpose, orderly arranged and indexed and subject to inspection by the public during regular business hours. The agency adopting such rules and regulations shall make copies thereof available for distribution to persons interested in or affected thereby. Such agencies are also authorized to provide for the mimeographing, printing, or other reproduction of their regulations and the distribution thereof. No rule or regulation shall become effective as law until 30 days after its adoption, except in cases of emergencies constituting an imminent threat to the public, in which event such rules or regulations shall become effective upon adoption; but, in all such cases, the agency adopting same shall as a part thereof state the conditions found by it to justify such immediate effectiveness. Where deemed desirable by the agency, hearing and notice as provided in Code Section 31-5-2 may be conducted by it prior to adoption of any rule or regulation. (Code 1933, § 88-307, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214.)

The 2011 amendment, effective July 1, 2011, substituted “Department of Public Health” for “Department of Community Health” in the first sentence of this Code section.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Health, §§ 38, 90.

C.J.S. — 39A C.J.S., Health and Environment, §§ 18 et seq., 39.

31-5-2. Hearings.

Hearings shall be required for any and all quasi-judicial actions and in any other proceeding required by this title or the Constitution of Georgia. All such hearings shall be conducted in accordance with Chapter 13 of Title 50, the “Georgia Administrative Procedure Act.” (Code 1933, § 88-304, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1977, p. 309, § 1; Ga. L. 1993, p. 1290, § 2; Ga. L. 1995, p. 10, § 31; Ga. L. 2000, p. 1589, § 3; Ga. L. 2009, p. 453, § 1-22/HB 228.)

Editor’s notes. — Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provided that the 2000 amendment

was applicable to notices delivered on or after July 1, 2000.

JUDICIAL DECISIONS

Inapplicable to WIC Program. — Public hearing was not required before the Department of Human Resources (now the Department of Community

Health for these purposes) adopted Women, Infants and Children (WIC) Program vendor handbook, since WIC is not a service of the DHR (now the Department

of Community Health for these purposes). Accordingly, O.C.G.A. T. 31 was inapplica-

ble to the WIC program. So v. Ledbetter, 209 Ga. App. 666, 434 S.E.2d 517 (1993).

OPINIONS OF THE ATTORNEY GENERAL

Only person authorized to conduct hearings for county board of health is

board's chief executive officer. 1975 Op. Att'y Gen. No. U75-90.

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Health, §§ 39, 89.

C.J.S. — 39A C.J.S., Health and Environment, §§ 20 et seq., 84 et seq.

ALR. — Malicious prosecution predi-

cated upon prosecution, institution, or instigation of disciplinary proceeding against member of medical or allied profession, 39 ALR3d 473.

31-5-3. Appeals.

(a)(1) Any person who is a party to a proceeding and who is aggrieved or adversely affected by any final order or action of a county board of health or agency of the department may have review thereof by appeal to the department. Any person who is a party to a proceeding and who is aggrieved or adversely affected by any final order or action of the department may have review thereof by appeal to the superior court in the county in which the action arose or to the Superior Court of Fulton County.

(2) Appeals to the department shall be heard by it after not less than 20 days' notice delivered by certified mail or statutory overnight delivery is given to all parties and their counsel of record, at such times and places as are set forth in such notice; provided, however, if such appeal is not heard and determined within a period of 90 days, the decision shall stand reversed unless all parties consent to an extension of time. Review on appeal to the department shall be confined to the record transmitted from below and the questions raised in the appeal. Orders, rules, regulations, or other decisions of county boards of health or other agencies of the department shall not be set aside on appeal to the department unless contrary to law or rules and regulations of the department, or unsupported by substantial evidence on the record as a whole, or unreasonable.

(3) Appeal to the superior court shall be by petition which shall be filed in the clerk's office of such court within 30 days after the final order or action of the department; the petition shall set forth the names of the parties taking the appeal, the order, rule, regulation, or decision appealed from, and the reason it is claimed to be erroneous. The enforcement of the order or action appealed from shall not be stayed until and unless so ordered and directed by the reviewing court. A reviewing court may order a stay only if the court makes a

finding that the public health, safety, and welfare will not be harmed by the issuance of the stay. Upon the filing of such petition, the petitioner shall serve on the commissioner a copy thereof in a manner prescribed by law for the service of process, unless such service of process is waived. The review shall be conducted by the court without a jury and shall be confined to the record. In cases of alleged irregularities in procedure before the department, not shown in the record, proof thereon may be taken in the court. The court, upon request, shall hear oral argument and receive written briefs. The court shall not substitute its judgment for that of the department as to the weight of the evidence on questions of fact. The court may affirm the decision of the department or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (A) In violation of constitutional or statutory provisions;
- (B) In excess of the statutory authority of the department;
- (C) Made upon unlawful procedure;
- (D) Affected by other error of law;
- (E) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (F) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

(b) Upon perfection of the appeal as provided in subsection (a) of this Code section, it shall be the duty of the agency whose order, rule, regulation, or decision is under review by the department to cause a transcript of all pleadings, orders, evidence, and other proceedings including a copy of the appeal and motion for reconsideration, if any, filed with it to be transmitted to the department or the superior court in not more than 30 days. For the proceedings not reported, the agency or the department shall cause to be written out a narrative transcript of all evidence and proceedings before it under certificate of its director or examiner or other official conducting such hearings. (Code 1933, § 88-305, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1986, p. 1280, § 1; Ga. L. 2000, p. 1589, § 3.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1986, in paragraph (a)(3) the paragraphs (1) through (6) added were redesignated as subparagraphs (a)(3)(A) through (a)(3)(F), respectively.

Editor's notes. — Ga. L. 2000, p. 1589,

§ 16, not codified by the General Assembly, provided that the 2000 amendment was applicable to notices delivered on or after July 1, 2000.

Law reviews. — For annual survey of administrative law, see 38 Mercer L. Rev. 17 (1986).

JUDICIAL DECISIONS

Appeal from assessment of inspection fees. — O.C.G.A. § 31-5-3 did not provide a hotel, motel, and restaurant association with an avenue of administrative appeal from a county board of health's assessment of inspection fees since there was no "proceeding" or hearing conducted

by the board to which the association could have been a party. *Aldridge v. Georgia Hospitality & Travel Ass'n*, 251 Ga. 234, 304 S.E.2d 708 (1983).

Cited in *Cobb County Health Dep't v. Henson*, 226 Ga. 801, 177 S.E.2d 710 (1970).

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Health, §§ 39, 89.

C.J.S. — 39A C.J.S., Health and Environment, § 20 et seq.

ALR. — Right of public officer or board to appeal from a judicial decision affecting his or its order or decision, 117 ALR 216.

31-5-4. Testimony or production of evidence by compulsory process.

The testimony of any witnesses or the production of any books, papers, records, documents, physical objects, or other evidence for inspection may be compelled by any superior court of competent jurisdiction on application of the department or any county board of health seeking such process. (Code 1933, § 88-303, enacted by Ga. L. 1964, p. 499, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Health, §§ 39, 89, 95 et seq.

C.J.S. — 39A C.J.S., Health and Environment, § 20 et seq.

31-5-5. (Effective until January 1, 2013. See note.) Contents of official record as evidence; classification of privileged materials.

(a) Any order, rule, regulation, or any other document, record, or entry contained in the official record or minutes of the department or of any county board of health shall be admissible in evidence in any proceeding before any court or other tribunal in this state where otherwise admissible and not privileged or confidential under this Code section when certified as true and correct by and duly authorized by the director at the county level and the examiner at the state level. It shall be the duty of the director or examiner, who shall be custodian of such records, to furnish and certify copies of the record or other evidence upon payment of reasonable costs therefor. Nothing in this Code section shall be construed as applying to Code Section 12-5-175.

(b) The department and county boards of health are authorized by regulation to classify as confidential and privileged documents, reports

and other information and data obtained by them from persons, firms, corporations, municipalities, counties, and other public authorities and political subdivisions, where such matters relate to secret processes, formulas, and methods or where such matters were obtained or furnished on a confidential basis. All matters so classified shall not be subject to public inspection or discovery and shall not be subject to production or disclosure in any court of law or elsewhere until and unless the judge of the court of competent jurisdiction, after in camera inspection, determines that the public interest requires such production and disclosure or that such production and disclosure may be necessary in the interest of justice. (Code 1933, § 88-306, enacted by Ga. L. 1964, p. 499, § 1.)

Editor's notes. — Code Section 31-5-5 and the second version becomes effective is set out twice in this Code. The first on that date.
version is effective until January 1, 2013,

JUDICIAL DECISIONS

Cited in *Theragenics Corp. v. Georgia*
Dep't of Natural Res., 244 Ga. App. 829,
536 S.E.2d 613 (2000).

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Health,
§ 95 et seq.

C.J.S. — 39A C.J.S., Health and Envi-
ronment, § 20 et seq.

31-5-5. (Effective January 1, 2013. See note.) Classification of confidential and privileged materials.

The department and county boards of health are authorized by regulation to classify as confidential and privileged documents, reports and other information and data obtained by them from persons, firms, corporations, municipalities, counties, and other public authorities and political subdivisions, where such matters relate to secret processes, formulas, and methods or where such matters were obtained or furnished on a confidential basis. All matters so classified shall not be subject to public inspection or discovery and shall not be subject to production or disclosure in any court of law or elsewhere until and unless the judge of the court of competent jurisdiction, after in camera inspection, determines that the public interest requires such production and disclosure or that such production and disclosure may be necessary in the interests of justice. (Code 1933, § 88-306, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 2011, p. 99, § 42/HB 24.)

The 2011 amendment, effective January 1, 2013, deleted former subsection (a), which read: "Any order, rule, regulation,

or any other document, record, or entry contained in the official record or minutes of the department or of any county board

of health shall be admissible in evidence in any proceeding before any court or other tribunal in this state where otherwise admissible and not privileged or confidential under this Code section when certified as true and correct by and duly authorized by the director at the county level and the examiner at the state level. It shall be the duty of the director or examiner, who shall be custodian of such records, to furnish and certify copies of the record or other evidence upon payment of reasonable costs therefor. Nothing in this Code section shall be construed as applying to Code Section 12-5-175.; deleted the subsection (b) designation; and substituted "interests" for "interest" near the

end of the last sentence of this Code section. See editor's note for applicability.

Editor's notes. — Code Section 31-5-5 is set out twice in this Code. The first version is effective until January 1, 2013, and the second version becomes effective on that date.

Ga. L. 2011, p. 99, § 101/HB 24, not codified by the General Assembly, provides that this Act shall apply to any motion made or hearing or trial commenced on or after January 1, 2013.

Law reviews. — For article, "Evidence," see 27 Ga. St. U.L. Rev. 1 (2011). For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 1 (2011).

31-5-6. Distribution of rules.

The department and all county boards of health are directed to prescribe and make available for distribution the rules of practice and procedure to implement this chapter. (Code 1933, § 88-308, enacted by Ga. L. 1964, p. 499, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Health, § 95 et seq.

C.J.S. — 39A C.J.S., Health and Environment, § 20 et seq.

31-5-7. Application of this chapter.

This chapter shall apply to all other chapters of this title and all amendments hereafter enacted with respect thereto unless provided otherwise expressly or by necessary implication. (Code 1933, § 88-309, enacted by Ga. L. 1964, p. 499, § 1.)

31-5-8. Penalty for violations of the provisions of this title.

Any person violating the provisions of this title shall be guilty of a misdemeanor, provided that this Code section shall not apply to violations of the provisions of Chapter 20, 22, or 24 of this title. (Code 1933, § 88-301, enacted by Ga. L. 1964, p. 499, § 1.)

JUDICIAL DECISIONS

Cited in Culverhouse v. Atlanta Ass'n for Convalescent Aged Persons, 127 Ga. App. 574, 194 S.E.2d 299 (1972).

RESEARCH REFERENCES

C.J.S. — 39A C.J.S., Health and Environment, § 88.

31-5-9. Injunctions for enjoining violations of the provisions of this title; supersedeas; attachment for contempt; injunctions to abate public nuisances; where actions may be instituted.

(a) The Department of Public Health and all county boards of health and the Department of Community Health, as appropriate, are empowered to institute appropriate proceedings for injunction in the courts of competent jurisdiction in this state for the purpose of enjoining a violation of any provision of this title as now existing or as may be hereafter amended or of any regulation or order duly issued by the department, any county board of health, or the Department of Community Health provided that this Code section shall not apply to violations of the provisions of Chapter 20 of this title. The department, the county boards of health, and the Department of Community Health, as appropriate, are also empowered to maintain action for injunction to abate any public nuisance which is injurious to the public health, safety, or comfort. Such actions may be maintained notwithstanding the fact that such violation also constitutes a crime and notwithstanding that other adequate remedies at law exist. Such actions may be instituted in the name of the department, any county board, or the Department of Community Health, as the case may be, in the county in which a violation of any provision of this title occurs. For purposes of this Code section, the county boards of health are declared to be legal entities capable of maintaining actions in their respective names without naming the individuals constituting such board, or acting on behalf of the department, as the case may be.

(b) Notwithstanding the provisions of Code Section 5-6-13, an appeal or a notice of intent to appeal an adjudication of contempt of court of a party subject to an interlocutory or final judgment in a court action for an injunction instituted under authority of this Code section for a violation of a licensing requirement of this title shall not operate as a supersedeas unless it is so ordered by the court; provided, however, that the court may grant a supersedeas in such a case after making a finding that the health, safety, or welfare of the recipients of the services will not be substantially harmed by the issuance of the stay.

(c) Unless otherwise ordered by the court pursuant to subsection (b) of this Code section, an interlocutory or final judgment in an action granting an injunction under this Code section may be enforced by attachment for contempt. (Code 1933, § 88-302, enacted by Ga. L. 1964,

p. 499, § 1; Ga. L. 1997, p. 544, § 1; Ga. L. 1998, p. 128, § 31; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 5-10/HB 214.)

The 2011 amendment, effective July 1, 2011, in subsection (a), inserted “and the Department of Community Health, as appropriate,” in the first and second sentences, inserted “or the Department of Community Health” in the first and fourth sentences, substituted “Department of Public Health” for “Department of Community Health” near the beginning, sub-

stituted “department, the county boards” for “department and the county boards” in the second sentence, and substituted “department, any county board” for “department or any county board” in the fourth sentence.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

JUDICIAL DECISIONS

Cited in Cobb County Health Dep’t v. Henson, 226 Ga. 801, 177 S.E.2d 710 (1970); Cason v. Upson County Bd. of Health, 227 Ga. 451, 181 S.E.2d 487 (1971).

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Health, §§ 93, 103 et seq.

C.J.S. — 39A C.J.S., Health and Environment, §§ 87, 93.

31-5-10. Notifying department or board of health of conditions on private property which are injurious to the public; inspection warrant; notice to owner and occupant; abatement.

(a) The provisions of this Code section shall apply only in those counties of this state having a population of 450,000 or more according to the United States decennial census of 1980 or any future such census.

(b) Any person who knows or suspects that a condition exists on private property, which condition is injurious to the public health, safety, or comfort, shall immediately notify the department or the county board of health. Upon receiving such notice, the department or the county board of health shall be authorized to obtain an inspection warrant as provided in Code Section 31-5-21. If the department or the county board of health determines that there exists a condition which is injurious to the public health, safety, or comfort, the department or county board of health shall, by registered or certified mail or statutory overnight delivery with return receipt requested, notify the occupants of the property and, if different from the occupant, the person, firm, or corporation which owns the property. Notice to the owner shall be sent to the address shown on the county or municipal property tax records.

(c) If the department or the county board of health brings an action for injunction to abate a public nuisance which is injurious to the public

health, safety, or comfort, process shall be served on the occupants of the property and on any person, firm, or corporation having any interest in the property according to the county property records. Service shall be made in accordance with Code Section 9-11-4; and, if any person, firm, or corporation to be served resides outside the state, has departed the state, cannot, after due diligence, be found within the state, or conceals himself to avoid the service of summons, the judge or clerk may make an order that the service be made by publication of summons as provided in Code Section 9-11-4.

(d) In addition to any form of relief ordered by the court, the superior court may, as a part of its order, authorize the department or the county board of health to take appropriate action to abate such public nuisance. Any cost incurred by the department or the county board of health to abate such nuisance shall constitute a lien against the property, and such lien shall have the same status and priority as a lien for taxes. (Code 1981, § 31-5-10, enacted by Ga. L. 1985, p. 388, § 1; Ga. L. 2000, p. 1589, § 3.)

Editor's notes. — Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provided that the 2000 amendment

was applicable to notices delivered on or after July 1, 2000.

JUDICIAL DECISIONS

County's recovery of compensatory damages not authorized. — When a county recovered, identified, and properly disposed of bodies found at a crematorium, O.C.G.A. §§ 31-5-10(d) and 41-2-9(a)(7) did not authorize the county to recover the county's costs of doing so as compensatory damages in a tort action against the crematorium, funeral homes,

and funeral directors alleging negligence and public nuisance claims; §§ 31-5-10 and 41-2-9 do not authorize a county to obtain compensatory damages in a tort action as a means of redress for abating a public nuisance. *Walker County v. Tri-State Crematory*, 284 Ga. App. 34, 643 S.E.2d 324 (2007).

RESEARCH REFERENCES

ALR. — Construction and application of "Municipal Cost Recovery Rule," or

"Free Public Services Doctrine," 32 ALR6th 261.

ARTICLE 2

INSPECTION WARRANTS

Cross references. — Further provisions regarding use of inspection warrants

in enforcement of public health laws, § 37-1-70 et seq.

RESEARCH REFERENCES

ALR. — Propriety of state or local government health officer's warrantless

search — post-Camara cases, 53 ALR4th 1168.

31-5-20. “Inspection warrant” defined.

As used in this chapter, the term “inspection warrant” means a warrant authorizing a search or inspection of private property where such a search or inspection is one that is necessary for the enforcement of any of the provisions of laws authorizing licensure, inspection, or regulation by the Department of Public Health or a local agency thereof or by the Department of Community Health. (Code 1933, § 88-301A, enacted by Ga. L. 1975, p. 693, § 1; Ga. L. 1982, p. 1667, §§ 1, 2; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 5-11/HB 214.)

The 2011 amendment, effective July 1, 2011, substituted “Department of Public Health” for “Department of Community Health”, and added “or by the Department of Community Health” at the end of this Code section.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

31-5-21. Persons who may obtain inspection warrants; authorization of searches and inspections of property.

The commissioner or the commissioner of community health or his or her delegate or the director of any county board of health, in addition to other procedures now or hereafter provided, may obtain an inspection warrant under the conditions specified in this chapter. Such warrant shall authorize the commissioner or the commissioner of community health or the director of any county board of health, or the agents of any, or the Department of Agriculture, as appropriate, to conduct a search or inspection of property, either with or without the consent of the person whose property is to be searched or inspected, if such search or inspection is one that is elsewhere authorized under the rules and regulations duly promulgated under this title or any provision of law which authorizes licensure, inspection, or regulation by the Department of Public Health or a local agency thereof or by the Department of Community Health. (Code 1933, § 88-302A, enacted by Ga. L. 1975, p. 693, § 1; Ga. L. 1982, p. 1667, §§ 1, 2; Ga. L. 1998, p. 128, § 31; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 5-12/HB 214.)

The 2011 amendment, effective July 1, 2011, inserted “or the commissioner of community health” near the beginning of the first and second sentences; inserted “or her” in the first sentence; and, in the second sentence, substituted “agents of any” for “agents of either”, substituted “Department of Public Health” for “De-

partment of Community Health”, and added “or by the Department of Community Health” at the end.

Cross references. — Search warrants generally, § 17-5-20 et seq.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Health, §§ 58, 60, 66, 72, 73, 86, 88.

C.J.S. — 39A C.J.S., Health and Environment, §§ 51 et seq., 71, 84 et seq.

31-5-22. Issuance; grounds.

(a) Inspection warrants shall be issued only by a judge of a court of record whose territorial jurisdiction encompasses the property to be inspected.

(b) The issuing judge shall issue the warrant when he is satisfied that the following conditions are met:

(1) The one seeking the warrant must establish under oath or affirmation that the property to be inspected is to be inspected as a part of a legally authorized program of inspection which includes that property or that there is probable cause for believing that there is a condition, object, activity, or circumstance which legally justifies such an inspection of that property; and

(2) The issuing judge determines that the issuance of the warrant is authorized by this chapter. (Code 1933, §§ 88-303A, 88-304A, enacted by Ga. L. 1975, p. 693, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Health, §§ 58, 60, 66, 72, 73.

C.J.S. — 39A C.J.S., Health and Environment, § 84 et seq.

31-5-23. Contents.

The inspection warrant shall be validly issued only if it meets the following requirements:

(1) The warrant is attached to the affidavit required to be made in order to obtain the warrant;

(2) The warrant describes, either directly or by reference to the affidavit, the property upon which the inspection is to occur and is sufficiently accurate that the executor of the warrant and the owner or possessor of the property can reasonably determine from it the property of which the warrant authorizes an inspection;

(3) The warrant indicates the conditions, objects, activities, or circumstances which the inspection is intended to check or reveal; and

(4) The warrant refers, in general terms, to the statutory or regulatory provisions sought to be enforced. (Code 1933, § 88-305A, enacted by Ga. L. 1975, p. 693, § 1.)

RESEARCH REFERENCES

C.J.S. — 39A C.J.S., Health and Environment, § 84 et seq.

31-5-24. Exclusion of evidence obtained.

No facts discovered or evidence obtained in an inspection conducted under authority of an inspection warrant issued pursuant to this chapter shall be competent as evidence in any criminal proceeding against any party. (Code 1933, § 88-306A, enacted by Ga. L. 1975, p. 693, § 1.)

RESEARCH REFERENCES

C.J.S. — 39A C.J.S., Health and Environment, § 84 et seq.

CHAPTER 5A**DEPARTMENT OF COMMUNITY HEALTH**

Sec.

31-5A-1 through 31-5A-8. Redesignated.

31-5A-1 through 31-5A-8.

Editor's notes. — Ga. L. 2009, p. 453, § 1-1/HB 228, effective July 1, 2009, re-designated former Chapter 5A of Title 31 as present Chapter 2 of Title 31.

CHAPTER 6

STATE HEALTH PLANNING
AND DEVELOPMENT

Article 1

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- 31-6-1. Declaration of policy.
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- 31-6-20. Health Strategies Council generally [Repealed].
31-6-21. Department of Community Health generally.
31-6-21.1. Procedures for rule making by Department of Community Health.
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Article 3

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- 31-6-40. Certificate of need required for new institutional health services; exemption.
31-6-40.1. Acquisition of health care facilities; penalty for failure to notify the department; limitation on applications; agreement to care for indigent patients; requirements for destination cancer hospitals; notice and hearing provisions for penalties authorized under this Code section.
31-6-40.2. New perinatal services.
31-6-41. Scope and term of validity of certificate.
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- 31-6-43. Acceptance or rejection of application for certificate.
31-6-44. Certificate of Need Appeal Panel.
31-6-44.1. Judicial review.
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31-6-45.1. Automatic revocation of certificate of need or authority.
31-6-45.2. Participation as Medicaid provider requirement; termination by health care facility of participation as provider of medical assistance; monetary penalty.
31-6-46. Annual report by department.
31-6-47. Exemptions from chapter.
31-6-47.1. Prior notice and approval of certain activities.
31-6-48. Prior entities abolished; transfer of contractual obligations.
31-6-49. Transitional provisions.
31-6-50. Application of review procedures to expenditures under Section 1122 of the federal Social Security Act.

Article 4

Reports

- 31-6-70. Reports to the department by certain health care facilities and all ambulatory surgical centers and imaging centers.

Article 5

State Commission on the Efficacy of
the Certificate of Need Program

- 31-6-90 through 31-6-95 [Repealed].

Cross references. — Administration of mental health and developmental disabilities services generally, T. 37, C. 2.

Editor's notes. — Ga. L. 1983, p. 1566,

§ 1 effective July 1, 1983, repealed the Code sections formerly codified at this chapter, also pertaining to state health planning and development, and enacted

the current chapter. The former chapter consisted of Code Sections 31-6-1, 31-6-2, 31-6-20 through 31-6-28, and 31-6-40 through 31-6-51 and was based on Ga. L. 1978, p. 941, § 4; Ga. L. 1979, p. 1109, §§ 1-3; and Ga. L. 1982, p. 3, § 31.

Administrative rules and regulations. — Administration, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Community Health, Health Planning, Chapter 111-2-1.

Certificate of need, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Community Health, Health Planning, Chapter 111-2-2.

Patient's right to independent review, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Community Health, Health Planning, Chapter 111-2-3.

JUDICIAL DECISIONS

Enforcement of chapter. — Prior to the 1983 reenactment, O.C.G.A. Ch. 6, T. 31 authorized a health planning agency to bring an action to enforce provisions of that chapter, but did not give standing to

a competitor of a health service provider. *Executive Comm. v. Metro Ambulance Servs., Inc.*, 250 Ga. 61, 296 S.E.2d 547 (1982).

RESEARCH REFERENCES

ALR. — Regulation of practice of acupuncture, 17 ALR4th 964.

ARTICLE 1

GENERAL PROVISIONS

RESEARCH REFERENCES

Am. Jur. Proof of Facts. — Denial of Hospital Staff Privileges, 1 POF2d 65.

Hospital's Failure to Supervise Private Physician Using Hospital Facilities, 6 POF2d 647.

Hospital Liability for Negligent Selection of Staff Physician, 14 POF3d 433.

Hospital Liability for Negligent Retention of Staff Physician, 15 POF3d 181.

Discrimination in Provision of Medical Services on Basis of Disability, 49 POF3d 1.

Liability of Physician for Improper Referral of Patients to a Medical Care Facility in which Physician has a Financial Interest, 61 POF3d 245.

Liability of Health Maintenance Organizations, 66 POF3d 1.

31-6-1. Declaration of policy.

The policy of this state and the purposes of this chapter are to ensure access to quality health care services and to ensure that health care services and facilities are developed in an orderly and economical manner and are made available to all citizens and that only those health care services found to be in the public interest shall be provided in this state. To achieve such public policy and purposes, it is essential that appropriate health planning activities be undertaken and implemented and that a system of mandatory review of new institutional

health services be provided. Health care services and facilities should be provided in a manner that avoids unnecessary duplication of services, that is cost effective, that provides quality health care services, and that is compatible with the health care needs of the various areas and populations of the state. (Code 1981, § 31-6-1, enacted by Ga. L. 1983, p. 1566, § 1; Ga. L. 2008, p. 12, § 1-1/SB 433.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2008, the second occurrence of “and” was deleted preceding “purposes, it is essential” in the second sentence.

Editor’s notes. — Ga. L. 2008, p. 12,

§ 3-1/SB 433, not codified by the General Assembly, provides that the amendment to this Code section shall only apply to applications submitted on or after July 1, 2008.

JUDICIAL DECISIONS

Cited in *St. Joseph’s Hosp. v. Hospital Corp. of Am.*, 795 F.2d 948 (11th Cir. 1986); *HCA Health Servs., Inc. v. Roach*, 263 Ga. 798, 439 S.E.2d 494 (1994); Ga.

Dep’t of Cmty. Health, Div. of Health Planning v. Gwinnett Hosp. Sys., 262 Ga. App. 879, 586 S.E.2d 762 (2003).

RESEARCH REFERENCES

C.J.S. — 39A C.J.S., Health and Environment, § 9.

31-6-2. Definitions.

As used in this chapter, the term:

(1) “Ambulatory surgical center or obstetrical facility” means a public or private facility, not a part of a hospital, which provides surgical or obstetrical treatment performed under general or regional anesthesia in an operating room environment to patients not requiring hospitalization.

(2) “Application” means a written request for a certificate of need made to the department, containing such documentation and information as the department may require.

(3) “Basic perinatal services” means providing basic inpatient care for pregnant women and newborns without complications; managing perinatal emergencies; consulting with and referring to specialty and subspecialty hospitals; identifying high-risk pregnancies; providing follow-up care for new mothers and infants; and providing public/community education on perinatal health.

(4) “Bed capacity” means space used exclusively for inpatient care, including space designed or remodeled for inpatient beds even though temporarily not used for such purposes. The number of beds to be counted in any patient room shall be the maximum number for which

adequate square footage is provided as established by rules of the department, except that single beds in single rooms shall be counted even if the room contains inadequate square footage.

(5) "Board" means the Board of Community Health.

(6) "Certificate of need" means an official determination by the department, evidenced by certification issued pursuant to an application, that the action proposed in the application satisfies and complies with the criteria contained in this chapter and rules promulgated pursuant hereto.

(7) "Certificate of Need Appeal Panel" or "appeal panel" means the panel of independent hearing officers created pursuant to Code Section 31-6-44 to conduct appeal hearings.

(8) "Clinical health services" means diagnostic, treatment, or rehabilitative services provided in a health care facility, or parts of the physical plant where such services are located in a health care facility, and includes, but is not limited to, the following: radiology and diagnostic imaging, such as magnetic resonance imaging and positron emission tomography; radiation therapy; biliary lithotripsy; surgery; intensive care; coronary care; pediatrics; gynecology; obstetrics; general medical care; medical/surgical care; inpatient nursing care, whether intermediate, skilled, or extended care; cardiac catheterization; open-heart surgery; inpatient rehabilitation; and alcohol, drug abuse, and mental health services.

(9) "Commissioner" means the commissioner of community health.

(10) "Consumer" means a person who is not employed by any health care facility or provider and who has no financial or fiduciary interest in any health care facility or provider.

(11) "Continuing care retirement community" means an organization, whether operated for profit or not, whose owner or operator undertakes to provide shelter, food, and either nursing care or personal services, whether such nursing care or personal services are provided in the facility or in another setting, and other services, as designated by agreement, to an individual not related by consanguinity or affinity to such owner or operator providing such care pursuant to an agreement for a fixed or variable fee, or for any other remuneration of any type, whether fixed or variable, for the period of care, payable in a lump sum or lump sum and monthly maintenance charges or in installments. Agreements to provide continuing care include agreements to provide care for any duration, including agreements that are terminable by either party.

(12) "Department" means the Department of Community Health established under Chapter 2 of this title.

(13) "Destination cancer hospital" means an institution with a licensed bed capacity of 50 or less which provides diagnostic, therapeutic, treatment, and rehabilitative care services to cancer inpatients and outpatients, by or under the supervision of physicians, and whose proposed annual patient base is composed of a minimum of 65 percent of patients who reside outside of the State of Georgia.

(14) "Develop," with reference to a project, means:

(A) Constructing, remodeling, installing, or proceeding with a project, or any part of a project, or a capital expenditure project, the cost estimate for which exceeds \$2.5 million; or

(B) The expenditure or commitment of funds exceeding \$1 million for orders, purchases, leases, or acquisitions through other comparable arrangements of major medical equipment; provided, however, that this shall not include build-out costs, as defined by the department, but shall include all functionally related equipment, software, and any warranty and services contract costs for the first five years.

Notwithstanding subparagraphs (A) and (B) of this paragraph, the expenditure or commitment or incurring an obligation for the expenditure of funds to develop certificate of need applications, studies, reports, schematics, preliminary plans and specifications, or working drawings or to acquire, develop, or prepare sites shall not be considered to be the developing of a project.

(15) "Diagnostic imaging" means magnetic resonance imaging, computed tomography (CT) scanning, positron emission tomography (PET) scanning, positron emission tomography/computed tomography, and other advanced imaging services as defined by the department by rule, but such term shall not include X-rays, fluoroscopy, or ultrasound services.

(16) "Diagnostic, treatment, or rehabilitation center" means any professional or business undertaking, whether for profit or not for profit, which offers or proposes to offer any clinical health service in a setting which is not part of a hospital; provided, however, that any such diagnostic, treatment, or rehabilitation center that offers or proposes to offer surgery in an operating room environment and to allow patients to remain more than 23 hours shall be considered a hospital for purposes of this chapter.

(17) "Health care facility" means hospitals; destination cancer hospitals; other special care units, including but not limited to podiatric facilities; skilled nursing facilities; intermediate care facilities; personal care homes; ambulatory surgical centers or obstetrical facilities; health maintenance organizations; home health agencies;

and diagnostic, treatment, or rehabilitation centers, but only to the extent paragraph (3) or (7), or both paragraphs (3) and (7), of subsection (a) of Code Section 31-6-40 are applicable thereto.

(18) "Health maintenance organization" means a public or private organization organized under the laws of this state which:

(A) Provides or otherwise makes available to enrolled participants health care services, including at least the following basic health care services: usual physicians' services, hospitalization, laboratory, X-ray, emergency and preventive services, and out-of-area coverage;

(B) Is compensated, except for copayments, for the provision of the basic health care services listed in subparagraph (A) of this paragraph to enrolled participants on a predetermined periodic rate basis; and

(C) Provides physicians' services primarily:

(i) Directly through physicians who are either employees or partners of such organization; or

(ii) Through arrangements with individual physicians organized on a group practice or individual practice basis.

(19) "Health Strategies Council" or "council" means the body created by this chapter to advise the department.

(20) "Home health agency" means a public agency or private organization, or a subdivision of such an agency or organization, which is primarily engaged in providing to individuals who are under a written plan of care of a physician, on a visiting basis in the places of residence used as such individuals' homes, part-time or intermittent nursing care provided by or under the supervision of a registered professional nurse, and one or more of the following services:

(A) Physical therapy;

(B) Occupational therapy;

(C) Speech therapy;

(D) Medical social services under the direction of a physician; or

(E) Part-time or intermittent services of a home health aide.

(21) "Hospital" means an institution which is primarily engaged in providing to inpatients, by or under the supervision of physicians, diagnostic services and therapeutic services for medical diagnosis, treatment, and care of injured, disabled, or sick persons or rehabilitation services for the rehabilitation of injured, disabled, or sick

persons. Such term includes public, private, psychiatric, rehabilitative, geriatric, osteopathic, and other specialty hospitals.

(22) "Intermediate care facility" means an institution which provides, on a regular basis, health related care and services to individuals who do not require the degree of care and treatment which a hospital or skilled nursing facility is designed to provide but who, because of their mental or physical condition, require health related care and services beyond the provision of room and board.

(23) "Joint venture ambulatory surgical center" means a free-standing ambulatory surgical center that is jointly owned by a hospital in the same county as the center or a hospital in a contiguous county if there is no hospital in the same county as the center and a single group of physicians practicing in the center and that provides surgery in a single specialty as defined by the department; provided, however, that general surgery, a group practice which includes one or more physiatrists who perform services that are reasonably related to the surgical procedures performed in the center, and a group practice in orthopedics which includes plastic hand surgeons with a certificate of added qualifications in Surgery of the Hand from the American Board of Plastic and Reconstructive Surgery shall be considered a single specialty. The ownership interest of the hospital shall be no less than 30 percent and the collective ownership of the physicians or group of physicians shall be no less than 30 percent.

(24) "New and emerging health care service" means a health care service or utilization of medical equipment which has been developed and has become acceptable or available for implementation or use but which has not yet been addressed under the rules and regulations promulgated by the department pursuant to this chapter.

(25) "Nonclinical health services" means services or functions provided or performed by a health care facility, and the parts of the physical plant where they are located in a health care facility that are not diagnostic, therapeutic, or rehabilitative services to patients and are not clinical health services defined in this chapter.

(26) "Offer" means that the health care facility is open for the acceptance of patients or performance of services and has qualified personnel, equipment, and supplies necessary to provide specified clinical health services.

(27) "Operating room environment" means an environment which meets the minimum physical plant and operational standards specified in the rules of the department which shall consider and use the design and construction specifications as set forth in the *Guidelines for Design and Construction of Health Care Facilities* published by the American Institute of Architects.

(28) "Pediatric cardiac catheterization" means the performance of angiographic, physiologic, and, as appropriate, therapeutic cardiac catheterization on children 14 years of age or younger.

(29) "Person" means any individual, trust or estate, partnership, limited liability company or partnership, corporation (including associations, joint-stock companies, and insurance companies), state, political subdivision, hospital authority, or instrumentality (including a municipal corporation) of a state as defined in the laws of this state. This term shall include all related parties, including individuals, business corporations, general partnerships, limited partnerships, limited liability companies, limited liability partnerships, joint ventures, nonprofit corporations, or any other for profit or not for profit entity that owns or controls, is owned or controlled by, or operates under common ownership or control with a person.

(30) "Personal care home" means a residential facility that is certified as a provider of medical assistance for Medicaid purposes pursuant to Article 7 of Chapter 4 of Title 49 having at least 25 beds and providing, for compensation, protective care and oversight of ambulatory, nonrelated persons who need a monitored environment but who do not have injuries or disabilities which require chronic or convalescent care, including medical, nursing, or intermediate care. Personal care homes include those facilities which monitor daily residents' functioning and location, have the capability for crisis intervention, and provide supervision in areas of nutrition, medication, and provision of transient medical care. Such term does not include:

(A) Old age residences which are devoted to independent living units with kitchen facilities in which residents have the option of preparing and serving some or all of their own meals; or

(B) Boarding facilities which do not provide personal care.

(31) "Project" means a proposal to take an action for which a certificate of need is required under this chapter. A project or proposed project may refer to the proposal from its earliest planning stages up through the point at which the new institutional health service is offered.

(32) "Rural county" means a county having a population of less than 35,000 according to the United States decennial census of 2000 or any future such census.

(33) "Single specialty ambulatory surgical center" means an ambulatory surgical center where surgery is performed in the offices of an individual private physician or single group practice of private physicians if such surgery is performed in a facility that is owned,

operated, and utilized by such physicians who also are of a single specialty; provided, however, that general surgery, a group practice which includes one or more physiatrists who perform services that are reasonably related to the surgical procedures performed in the center, and a group practice in orthopedics which includes plastic hand surgeons with a certificate of added qualifications in Surgery of the Hand from the American Board of Plastic and Reconstructive Surgery shall be considered a single specialty.

(34) "Skilled nursing facility" means a public or private institution or a distinct part of an institution which is primarily engaged in providing inpatient skilled nursing care and related services for patients who require medical or nursing care or rehabilitation services for the rehabilitation of injured, disabled, or sick persons.

(35) "Specialty hospital" means a hospital that is primarily or exclusively engaged in the care and treatment of one of the following: patients with a cardiac condition, patients with an orthopedic condition, patients receiving a surgical procedure, or patients receiving any other specialized category of services defined by the department. A "specialty hospital" does not include a destination cancer hospital.

(36) "State health plan" means a comprehensive program based on recommendations by the Health Strategies Council and the board, approved by the Governor, and implemented by the State of Georgia for the purpose of providing adequate health care services and facilities throughout the state.

(37) "Uncompensated indigent or charity care" means the dollar amount of "net uncompensated indigent or charity care after direct and indirect (all) compensation" as defined by, and calculated in accordance with, the department's Hospital Financial Survey and related instructions.

(38) "Urban county" means a county having a population equal to or greater than 35,000 according to the United States decennial census of 2000 or any future such census. (Code 1981, § 31-6-2, enacted by Ga. L. 1983, p. 1566, § 1; Ga. L. 1984, p. 22, § 31; Ga. L. 1989, p. 1566, § 1; Ga. L. 1989, p. 1685, § 1; Ga. L. 1991, p. 94, § 31; Ga. L. 1991, p. 1871, §§ 1-5.1; Ga. L. 1991, p. 1880, § 1; Ga. L. 1999, p. 296, §§ 3, 4, 22; Ga. L. 2007, p. 173, § 2A/HB 429; Ga. L. 2008, p. 12, § 1-1/SB 433; Ga. L. 2009, p. 8, § 31/SB 46; Ga. L. 2009, p. 453, § 1-8/HB 228.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1990, a misspelling of the first occurrence of "services" in paragraph (15) was corrected.

Pursuant to Code Section 28-9-5, in 2008, in paragraph (17), a semicolon was

deleted at the end, and, in paragraph (23), "a contiguous" was substituted for "an contiguous" in the first sentence.

Editor's notes. — Ga. L. 2008, p. 12, § 3-1/SB 433, not codified by the General Assembly, provides that the amendment

to this Code section shall only apply to applications submitted on or after July 1, 2008.

JUDICIAL DECISIONS

Certificate of need. — Division of Health Planning granting a certificate of need was not arbitrary and capricious as the proposed new institutional health service was reasonably consistent with the relevant goals and objectives of the State Health Plan as set forth in Ga. Comp. R. & Regs. r. 272-2-.08(b)(1), and it did not err in interpreting the 12-month rule in

O.C.G.A. § 31-6-2. Ga. Dep't of Cmty. Health, Div. of Health Planning v. Gwinnett Hosp. Sys., 262 Ga. App. 879, 586 S.E.2d 762 (2003).

Cited in Tift County Hosp. Auth. v. MRS of Tifton, Ga., Inc., 255 Ga. 164, 335 S.E.2d 546 (1985); St. Joseph's Hosp. v. Thunderbolt Health Care, Inc., 237 Ga. App. 454, 517 S.E.2d 334 (1999).

OPINIONS OF THE ATTORNEY GENERAL

Effect to be given to rules of State Health Planning and Development Agency under former statutes. — Those State Health Planning and Development Agency's rules in effect on June 30, 1983, which refer to the \$150,000 threshold in former O.C.G.A. § 31-6-2, or do not distinguish between capital expenditures and equipment expenditures as set out in § 31-6-2(14)(B) and (F) are "inconsistent with this chapter" under O.C.G.A. § 31-6-49, but so as to effectuate

the General Assembly's intent will be read together and harmonized with the controlling dollar amounts and classifications of the new law. 1983 Op. Att'y Gen. No. 83-34.

"Composite construction index" referred to in paragraph (14) of O.C.G.A. § 31-6-2 is to be applied to both the threshold for capital expenditures and the threshold for major medical equipment. 1983 Op. Att'y Gen. No. 83-61.

RESEARCH REFERENCES

C.J.S. — 39A C.J.S., Health and Environment, § 9.

ARTICLE 2

ORGANIZATION

31-6-20. Health Strategies Council generally.

Reserved. Repealed by Ga. L. 2012, p. 1132, § 1/SB 407, effective July 1, 2012.

Editor's notes. — This Code section was based on Code 1981, § 31-6-20, enacted by Ga. L. 1983, p. 1566, § 1; Ga. L. 1984, p. 22, § 31; Ga. L. 1990, p. 1903, § 7; Ga. L. 1991, p. 1880, §§ 2, 3; Ga. L.

1996, p. 6, § 31; Ga. L. 1999, p. 296, §§ 5, 22; Ga. L. 2005, p. 1036, § 24/SB 49; Ga. L. 2007, p. 173, § 2B/HB 429; Ga. L. 2008, p. 12, § 1-1/SB 433; Ga. L. 2009, p. 8, § 31/SB 46.

31-6-21. Department of Community Health generally.

(a) The Department of Community Health, established under Chapter 2 of this title, is authorized to administer the certificate of need program established under this chapter and, within the appropriations made available to the department by the General Assembly of Georgia and consistently with the laws of the State of Georgia, a state health plan adopted by the board. The department shall provide, by rule, for procedures to administer its functions until otherwise provided by the board.

(b) The functions of the department shall be:

(1) To conduct the health planning activities of the state and to implement those parts of the state health plan which relate to the government of the state;

(2) To prepare and revise a draft state health plan;

(3) To seek advice, at its discretion, from the Health Strategies Council in the performance by the department of its functions pursuant to this chapter;

(4) To adopt, promulgate, and implement rules and regulations sufficient to administer the provisions of this chapter including the certificate of need program;

(5) To define, by rule, the form, content, schedules, and procedures for submission of applications for certificates of need and periodic reports;

(6) To establish time periods and procedures consistent with this chapter to hold hearings and to obtain the viewpoints of interested persons prior to issuance or denial of a certificate of need;

(7) To provide, by rule, for such fees as may be necessary to cover the costs of hearing officers, preparing the record for appeals before such hearing officers and the Certificate of Need Appeal Panel of the decisions of the department, and other related administrative costs, which costs may include reasonable sharing between the department and the parties to appeal hearings;

(8) To establish, by rule, need methodologies for new institutional health services and health facilities. In developing such need methodologies, the department shall, at a minimum, consider the demographic characteristics of the population, the health status of the population, service use patterns, standards and trends, financial and geographic accessibility, and market economics. The department shall establish service-specific need methodologies and criteria for at least the following clinical health services: short stay hospital beds,

adult therapeutic cardiac catheterization, adult open heart surgery, pediatric cardiac catheterization and open heart surgery, Level II and III perinatal services, freestanding birthing centers, psychiatric and substance abuse inpatient programs, skilled nursing and intermediate care facilities, home health agencies, and continuing care retirement community sheltered facilities;

(9) To provide, by rule, for a reasonable and equitable fee schedule for certificate of need applications;

(10) To grant, deny, or revoke a certificate of need as applied for or as amended; and

(11) To perform powers and functions delegated by the Governor, which delegation may include the powers to carry out the duties and powers which have been delegated to the department under Section 1122 of the federal Social Security Act of 1935, as amended. (Code 1981, § 31-6-21, enacted by Ga. L. 1983, p. 1566, § 1; Ga. L. 1984, p. 22, § 31; Ga. L. 1985, p. 829, § 1; Ga. L. 1992, p. 6, § 31; Ga. L. 1994, p. 684, § 1; Ga. L. 1999, p. 296, §§ 6, 22; Ga. L. 2007, p. 173, § 2C/HB 429; Ga. L. 2008, p. 12, § 1-1/SB 433; Ga. L. 2009, p. 8, § 31/SB 46; Ga. L. 2009, p. 453, § 1-8/HB 228.)

Editor's notes. — Ga. L. 2008, p. 12, § 3-1/SB 433, not codified by the General Assembly, provides that the amendment to this Code section shall only apply to applications submitted on or after July 1, 2008.

U.S. Code. — Section 1122 of the federal Social Security Act of 1935, as amended, referred to in paragraph (11), is codified as 42 U.S.C. § 1320a-1.

JUDICIAL DECISIONS

Criteria used by Review Board. — Review Board could use not only the considerations listed in O.C.G.A. § 31-6-42, but also Health Planning Agency standards and criteria interpreting those standards, to make a decision in the case before the board. *North Fulton Community Hosp. v. State Health Planning & Dev. Agency*, 168 Ga. App. 801, 310 S.E.2d 764 (1983).

Rule 272-2-.09(13) construed. — Cardiac Surgery Rule, Rule 272-2-.09(13), promulgated pursuant to O.C.G.A.

§ 31-6-21, does not place a two-year moratorium on applications for adult cardiac surgery services and pediatric cardiac catheterization and surgical services, but merely requires that the applicant show need. *Chatham County Hosp. Auth. & Mem. Medical Center, Inc. v. St. Joseph's Hosp.*, 178 Ga. App. 628, 344 S.E.2d 463 (1986).

Cited in Ga. Dep't of Cmty. Health, Div. of Health Planning v. Gwinnett Hosp. Sys., 262 Ga. App. 879, 586 S.E.2d 762 (2003).

31-6-21.1. Procedures for rule making by Department of Community Health.

(a) Rules of the department shall be adopted, promulgated, and implemented as provided in this Code section and in Chapter 13 of Title

50, the "Georgia Administrative Procedure Act," except that the department shall not be required to comply with subsections (c) through (g) of Code Section 50-13-4.

(b) The department shall transmit three copies of the notice provided for in paragraph (1) of subsection (a) of Code Section 50-13-4 to the legislative counsel. The copies shall be transmitted at least 30 days prior to that department's intended action. Within five days after receipt of the copies, if possible, the legislative counsel shall furnish the presiding officer of each house with a copy of the notice and mail a copy of the notice to each member of the Health and Human Services Committee of the Senate and each member of the Health and Human Services Committee of the House of Representatives. Each such rule and any part thereof shall be subject to the making of an objection by either such committee within 30 days of transmission of the rule to the members of such committee. Any rule or part thereof to which no objection is made by both such committees may become adopted by the department at the end of such 30 day period. The department may not adopt any such rule or part thereof which has been changed since having been submitted to those committees unless:

(1) That change is to correct only typographical errors;

(2) That change is approved in writing by both committees and that approval expressly exempts that change from being subject to the public notice and hearing requirements of subsection (a) of Code Section 50-13-4;

(3) That change is approved in writing by both committees and is again subject to the public notice and hearing requirements of subsection (a) of Code Section 50-13-4; or

(4) That change is again subject to the public notice and hearing requirements of subsection (a) of Code Section 50-13-4 and the change is submitted and again subject to committee objection as provided in this subsection.

Nothing in this subsection shall prohibit the department from adopting any rule or part thereof without adopting all of the rules submitted to the committees if the rule or part so adopted has not been changed since having been submitted to the committees and objection thereto was not made by both committees.

(c) Any rule or part thereof to which an objection is made by both committees within the 30 day objection period under subsection (b) of this Code section shall not be adopted by the department and shall be invalid if so adopted. A rule or part thereof thus prohibited from being adopted shall be deemed to have been withdrawn by the department unless the department, within the first 15 days of the next regular

session of the General Assembly, transmits written notification to each member of the objecting committees that the department does not intend to withdraw that rule or part thereof but intends to adopt the specified rule or part effective the day following adjournment sine die of that regular session. A resolution objecting to such intended adoption may be introduced in either branch of the General Assembly after the fifteenth day but before the thirtieth day of the session in which occurs the notification of intent not to withdraw a rule or part thereof. In the event the resolution is adopted by the branch of the General Assembly in which the resolution was introduced, it shall be immediately transmitted to the other branch of the General Assembly. It shall be the duty of the presiding officer of the other branch to have that branch, within five days after receipt of the resolution, consider the resolution for purposes of objecting to the intended adoption of the rule or part thereof. Upon such resolution being adopted by two-thirds of the vote of each branch of the General Assembly, the rule or part thereof objected to in that resolution shall be disapproved and not adopted by the department. If the resolution is adopted by a majority but by less than two-thirds of the vote of each such branch, the resolution shall be submitted to the Governor for his or her approval or veto. In the event of a veto, or if no resolution is introduced objecting to the rule, or if the resolution introduced is not approved by at least a majority of the vote of each such branch, the rule shall automatically become adopted the day following adjournment sine die of that regular session. In the event of the Governor's approval of the resolution, the rule shall be disapproved and not adopted by the department.

(d) Any rule or part thereof which is objected to by only one committee under subsection (b) of this Code section and which is adopted by the department may be considered by the branch of the General Assembly whose committee objected to its adoption by the introduction of a resolution for the purpose of overriding the rule at any time within the first 30 days of the next regular session of the General Assembly. It shall be the duty of the department in adopting a proposed rule over such objection so to notify the chairpersons of the Health and Human Services Committee of the Senate and the Health and Human Services Committee of the House within ten days after the adoption of the rule. In the event the resolution is adopted by such branch of the General Assembly, it shall be immediately transmitted to the other branch of the General Assembly. It shall be the duty of the presiding officer of the other branch of the General Assembly to have such branch, within five days after the receipt of the resolution, consider the resolution for the purpose of overriding the rule. In the event the resolution is adopted by two-thirds of the votes of each branch of the General Assembly, the rule shall be void on the day after the adoption of the resolution by the second branch of the General Assembly. In the

event the resolution is ratified by a majority but by less than two-thirds of the votes of either branch, the resolution shall be submitted to the Governor for his or her approval or veto. In the event of a veto, the rule shall remain in effect. In the event of the Governor's approval, the rule shall be void on the day after the date of approval.

(e) Except for emergency rules, no rule or part thereof adopted by the department after April 3, 1985, shall be valid unless adopted in compliance with subsections (b), (c), and (d) of this Code section and subsection (a) of Code Section 50-13-4.

(f) Emergency rules shall not be subject to the requirements of subsection (b), (c), or (d) of this Code section but shall be subject to the requirements of subsection (b) of Code Section 50-13-4. Upon the first expiration of any department emergency rules, where those emergency rules are intended to cover matters which had been dealt with by the department's nonemergency rules but such nonemergency rules have been objected to by both legislative committees under this Code section, the emergency rules concerning those matters may not again be adopted except for one 120 day period. No emergency rule or part thereof which is adopted by the department shall be valid unless adopted in compliance with this subsection.

(g) Any proceeding to contest any rule on the ground of noncompliance with this Code section must be commenced within two years from the effective date of the rule.

(h) For purposes of this Code section, "rules" shall mean rules and regulations.

(i) The state health plan or the rules establishing considerations, standards, or similar criteria for the grant or denial of a certificate of need pursuant to Code Section 31-6-42 shall not apply to any application for a certificate of need as to which, prior to the effective date of such plan or rules, respectively, the evidence has been closed following a full evidentiary hearing before a hearing officer.

(j) This Code section shall apply only to rules adopted pursuant to this chapter. (Code 1981, § 31-6-21.1, enacted by Ga. L. 1985, p. 829, § 2; Ga. L. 1986, p. 148, § 1; Ga. L. 1992, p. 6, § 31; Ga. L. 1994, p. 684, § 2; Ga. L. 1999, p. 296, § 22; Ga. L. 2005, p. 48, § 1/HB 309; Ga. L. 2008, p. 12, § 1-1/SB 433; Ga. L. 2009, p. 453, § 1-23/HB 228.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1985, "April 3, 1985" was substituted for "this Code section becomes effective" in subsection (e).

Pursuant to Code Section 28-9-5, in 1986, a comma was inserted following "1985" in subsection (e).

Editor's notes. — Ga. L. 2008, p. 12, § 3-1/SB 433, not codified by the General Assembly, provides that the amendment to this Code section shall only apply to applications submitted on or after July 1, 2008.

Law reviews. — For annual survey of

Administrative Law, see 57 Mercer L. Rev. 1 (2005). For article, “The Status of Administrative Agencies under the Georgia

Constitution,” see 40 Ga. L. Rev. 1109 (2006).

JUDICIAL DECISIONS

Promulgation of executive branch rules and legislative oversight thereof. — O.C.G.A. § 31-6-21.1 does not violate the separation of powers doctrine simply because the statute enables the Department of Community Health to promulgate and adopt regulations pursuant to a delegated power; the statute does not invest the legislature with executive power, nor does the statute invest the executive with legislative power. Nor could it be said that the statute runs afoul

of enactment, bicameralism, and presentment provisions, as the statute allows for the adoption of rules consistent with legislation, but it does not enable the department to make laws. *Albany Surgical, P. C. v. Ga. Dep’t of Cmty. Health*, 278 Ga. 366, 602 S.E.2d 648 (2004).

Cited in *Ga. Dep’t of Cmty. Health, Div. of Health Planning v. Gwinnett Hosp. Sys.*, 262 Ga. App. 879, 586 S.E.2d 762 (2003).

31-6-22. Commissioner of department.

Repealed by Ga. L. 2008, p. 12, § 1-1/SB 433, effective July 1, 2008.

Editor’s notes. — This Code section was based on Code 1981, § 31-6-22, enacted by Ga. L. 1983, p. 1566, § 1; Ga. L. 1999, p. 296, § 7.

ARTICLE 3

CERTIFICATE OF NEED PROGRAM

Law reviews. — For article, “Contracting to Preserve Open Science: Consideration-Based Regulation in Patent Law,” see 58 Emory L.J. 889 (2009).

31-6-40. Certificate of need required for new institutional health services; exemption.

(a) On and after July 1, 2008, any new institutional health service shall be required to obtain a certificate of need pursuant to this chapter. New institutional health services include:

- (1) The construction, development, or other establishment of a new health care facility;
- (2) Any expenditure by or on behalf of a health care facility in excess of \$2.5 million which, under generally accepted accounting principles consistently applied, is a capital expenditure, except expenditures for acquisition of an existing health care facility not owned or operated by or on behalf of a political subdivision of this state, or any combination of such political subdivisions, or by or on behalf of a hospital authority, as defined in Article 4 of Chapter 7 of this title, or certificate of need owned by such facility in connection with its acquisition. The dollar amounts specified in this paragraph

and in subparagraph (A) of paragraph (14) of Code Section 31-6-2 shall be adjusted annually by an amount calculated by multiplying such dollar amounts (as adjusted for the preceding year) by the annual percentage of change in the composite index of construction material prices, or its successor or appropriate replacement index, if any, published by the United States Department of Commerce for the preceding calendar year, commencing on July 1, 2009, and on each anniversary thereafter of publication of the index. The department shall immediately institute rule-making procedures to adopt such adjusted dollar amounts. In calculating the dollar amounts of a proposed project for purposes of this paragraph and subparagraph (A) of paragraph (14) of Code Section 31-6-2, the costs of all items subject to review by this chapter and items not subject to review by this chapter associated with and simultaneously developed or proposed with the project shall be counted, except for the expenditure or commitment of or incurring an obligation for the expenditure of funds to develop certificate of need applications, studies, reports, schematics, preliminary plans and specifications or working drawings, or to acquire sites;

(3) The purchase or lease by or on behalf of a health care facility or a diagnostic, treatment, or rehabilitation center of diagnostic or therapeutic equipment with a value in excess of \$1 million; provided, however, that diagnostic or other imaging services that are not offered in a hospital or in the offices of an individual private physician or single group practice of physicians exclusively for use on patients of that physician or group practice shall be deemed to be a new institutional health service regardless of the cost of equipment; and provided, further, that this shall not include build out costs, as defined by the department, but shall include all functionally related equipment, software, and any warranty and services contract costs for the first five years. The acquisition of one or more items of functionally related diagnostic or therapeutic equipment shall be considered as one project. The dollar amount specified in this paragraph, in subparagraph (B) of paragraph (14) of Code Section 31-6-2, and in paragraph (10) of subsection (a) of Code Section 31-6-47 shall be adjusted annually by an amount calculated by multiplying such dollar amounts (as adjusted for the preceding year) by the annual percentage of change in the consumer price index, or its successor or appropriate replacement index, if any, published by the United States Department of Labor for the preceding calendar year, commencing on July 1, 2010;

(4) Any increase in the bed capacity of a health care facility except as provided in Code Section 31-6-47;

(5) Clinical health services which are offered in or through a health care facility, which were not offered on a regular basis in or

through such health care facility within the 12 month period prior to the time such services would be offered;

(6) Any conversion or upgrading of any general acute care hospital to a specialty hospital or of a facility such that it is converted from a type of facility not covered by this chapter to any of the types of health care facilities which are covered by this chapter; and

(7) Clinical health services which are offered in or through a diagnostic, treatment, or rehabilitation center which were not offered on a regular basis in or through that center within the 12 month period prior to the time such services would be offered, but only if the clinical health services are any of the following:

- (A) Radiation therapy;
- (B) Biliary lithotripsy;
- (C) Surgery in an operating room environment, including but not limited to ambulatory surgery; and
- (D) Cardiac catheterization.

(b) Any person proposing to develop or offer a new institutional health service or health care facility shall, before commencing such activity, submit a letter of intent and an application to the department and obtain a certificate of need in the manner provided in this chapter unless such activity is excluded from the scope of this chapter.

(c)(1) Any person who had a valid exemption granted or approved by the former Health Planning Agency or the department prior to July 1, 2008, shall not be required to obtain a certificate of need in order to continue to offer those previously offered services.

(2) Any facility offering ambulatory surgery pursuant to the exclusion designated on June 30, 2008, as division (14)(G)(iii) of Code Section 31-6-2; any diagnostic, treatment, or rehabilitation center offering diagnostic imaging or other imaging services in operation and exempt prior to July 1, 2008; or any facility operating pursuant to a letter of nonreviewability and offering diagnostic imaging services prior to July 1, 2008, shall:

- (A) Provide notice to the department of the name, ownership, location, single specialty, and services provided in the exempt facility;
- (B) Beginning on January 1, 2009, provide annual reports in the same manner and in accordance with Code Section 31-6-70; and
- (C)(i) Provide care to Medicaid beneficiaries and, if the facility provides medical care and treatment to children, to PeachCare for Kids beneficiaries and provide uncompensated indigent and

charity care in an amount equal to or greater than 2 percent of its adjusted gross revenue; or

(ii) If the facility is not a participant in Medicaid or the PeachCare for Kids Program, provide uncompensated care for Medicaid beneficiaries and, if the facility provides medical care and treatment to children, for PeachCare for Kids beneficiaries, uncompensated indigent and charity care, or both in an amount equal to or greater than 4 percent of its adjusted gross revenue if it:

(I) Makes a capital expenditure associated with the construction, development, expansion, or other establishment of a clinical health service or the acquisition or replacement of diagnostic or therapeutic equipment with a value in excess of \$800,000.00 over a two-year period;

(II) Builds a new operating room; or

(III) Chooses to relocate in accordance with Code Section 31-6-47.

Noncompliance with any condition of this paragraph shall result in a monetary penalty in the amount of the difference between the services which the center is required to provide and the amount actually provided and may be subject to revocation of its exemption status by the department for repeated failure to pay any fees or moneys due to the department or for repeated failure to produce data as required by Code Section 31-6-70 after notice to the exemption holder and a fair hearing pursuant to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." The dollar amount specified in this paragraph shall be adjusted annually by an amount calculated by multiplying such dollar amount (as adjusted for the preceding year) by the annual percentage of change in the consumer price index, or its successor or appropriate replacement index, if any, published by the United States Department of Labor for the preceding calendar year, commencing on July 1, 2009. In calculating the dollar amounts of a proposed project for the purposes of this paragraph, the costs of all items subject to review by this chapter and items not subject to review by this chapter associated with and simultaneously developed or proposed with the project shall be counted, except for the expenditure or commitment of or incurring an obligation for the expenditure of funds to develop certificate of need applications, studies, reports, schematics, preliminary plans and specifications or working drawings, or to acquire sites. Subparagraph (C) of this paragraph shall not apply to facilities offering ophthalmic ambulatory surgery pursuant to the exclusion designated on June 30, 2008, as division (14)(G)(iii) of Code Section 31-6-2 that are owned by physicians in the practice of ophthalmology.

(d) A certificate of need issued to a destination cancer hospital shall authorize the beds and all new institutional health services of such destination cancer hospital. As used in this subsection, the term "new institutional health service" shall have the same meaning provided for in subsection (a) of this Code section. A certificate of need shall only be issued to a destination cancer hospital that locates itself and all affiliated facilities within 25 miles of a commercial airport in this state with five or more runways. Such destination cancer hospital shall not be required to apply for or obtain additional certificates of need for new institutional health services related to the treatment of cancer patients, and such new institutional health services related to the treatment of cancer patients offered by the destination cancer hospital shall not be reviewed under any service-specific need methodology or rules except for those promulgated by the department for destination cancer hospitals. After commencing operations, in order to add an additional new institutional health service, a destination cancer hospital shall apply for and obtain an additional certificate of need under the applicable statutory provisions and any rules promulgated by the department for destination cancer hospitals, and such applications shall only be granted if the patient base of such destination cancer hospital is composed of at least 65 percent of out-of-state patients for two consecutive years. The department may apply rules for a destination cancer hospital only for those services that the department determines are to be used by the destination cancer hospital in connection with the treatment of cancer. In no case shall destination cancer hospital specific rules be used in the case of an application for open heart surgery, perinatal services, cardiac catheterization, and other services deemed by the department to be not reasonably related to the diagnosis and treatment of cancer; provided, however, that the department shall apply the destination cancer hospital specific rules if a destination cancer hospital applies for services and equipment required for it to meet federal or state laws applicable to a hospital. If such destination cancer hospital cannot show a patient base of a minimum of 65 percent from outside of this state, then its application for any new institutional health service shall be evaluated under the specific statutes and rules applicable to that particular service. If such destination cancer hospital applies for a certificate of need to add an additional new institutional health service before commencing operations or completing two consecutive years of operation, such applicant may rely on historical data from its affiliated entities, as set forth in paragraph (2) of subsection (b.1) of Code Section 31-6-42. Because destination cancer hospitals provide services primarily to out-of-state residents, the number of beds, services, and equipment destination cancer hospitals use shall not be counted as part of the department's inventory when determining the need for those items by other providers. No person shall be issued more than one certificate of need for a destination cancer hospital. Nothing in

this Code section shall in any way require a destination cancer hospital to obtain a certificate of need for any purpose that is otherwise exempt from the certificate of need requirement. Beginning January 1, 2010, the department shall not accept any application for a certificate of need for a new destination cancer hospital; provided, however, all other provisions regarding the upgrading, replacing, or purchasing of diagnostic or therapeutic equipment shall be applicable to an existing destination cancer hospital.

(e) The commissioner shall be authorized, with the approval of the board, to place a temporary moratorium of up to six months on the issuance of certificates of need for new and emerging health care services. Any such moratorium placed shall be for the purpose of promulgating rules and regulations regarding such new and emerging health care services. A moratorium may be extended one time for an additional three months if circumstances warrant, as approved by the board. In the event that final rules and regulations are not promulgated within the time period allowed by the moratorium, any applications received by the department for a new and emerging health care service shall be reviewed under existing general statutes and regulations relating to certificates of need. (Code 1981, § 31-6-40, enacted by Ga. L. 1983, p. 1566, § 1; Ga. L. 1991, p. 1871, § 6; Ga. L. 1999, p. 296, § 22; Ga. L. 2008, p. 12, § 1-1/SB 433; Ga. L. 2009, p. 8, § 31/SB 46.)

Cross references. — Licensed hospice exempt from certificate of need requirement, § 31-7-179.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2008, “a” was deleted following “no case shall” in the seventh sentence of subsection (d).

Editor’s notes. — By resolution (Ga. L. 1990, p. 970), the General Assembly di-

rected the State Health Planning Agency to make certain studies and reports and to update its rules and regulations.

Ga. L. 2008, p. 12, § 3-1/SB 433, not codified by the General Assembly, provides that the amendment to this Code section shall only apply to applications submitted on or after July 1, 2008.

JUDICIAL DECISIONS

Relocation of facility. — Nothing in O.C.G.A. § 31-6-40, or in rules of the State Health Planning Agency, gave the State Health Planning Agency (now Department of Community Health) authority to exempt a facility from Certificate of Need requirements if the facility was relocated. *HCA Health Servs., Inc. v. Roach*, 263 Ga. 798, 439 S.E.2d 494 (1994).

State Health Planning Agency (now Department of Community Health) did not have discretion to exempt a health care provider from review procedures estab-

lished by the certificate of need program. *North Fulton Medical Ctr. v. Roach*, 263 Ga. 814, 440 S.E.2d 18 (1994).

Relocation rule invalid. — Relocation rule under which the State Health Planning Agency (now Department of Community Health) issued a certificate of need to a facility more than two years after it had already relocated to a new site and commenced operation was in direct conflict with the requirement that both new and relocating facilities first must obtain a certificate of need before com-

mencing operations. *North Fulton Medical Ctr., Inc. v. Stephenson*, 269 Ga. 540, 501 S.E.2d 798 (1998).

Determination of agency to “grandfather” facility. — State Health Planning Agency (now Department of Community Health) did not have discretion to determine whether to “grandfather” a particular health care facility; rather, the agency is simply authorized to determine whether the facility may be grandfathered as one which existed and performed the same services prior to the Certificate of Need program in 1979. *HCA Health Servs., Inc. v. Roach*, 263 Ga. 798, 439 S.E.2d 494 (1994).

Mobile cardiac catheterization unit which was “grandfathered” and exempt from obtaining a certificate of need when the unit began operating was required to obtain a certificate of need when the unit was relocated. *Phoebe Putney Mem. Hosp. v. Roach*, 267 Ga. 619, 480 S.E.2d 595 (1997).

Conversion of hospital beds into skilled nursing beds. — Certificate of need was properly granted to a hospital for an 11 bed nursing facility, which would be created by converting 13 general acute care hospital beds into 11 skilled nursing beds, notwithstanding the contention of a nursing home that the nursing home should have received the certificate of need. *St. Joseph’s Hosp. v. Thunderbolt Health Care, Inc.*, 237 Ga. App. 454, 517 S.E.2d 334 (1999).

Application to Open Records Act. — Procedures set forth in O.C.G.A. Art. 3, Ch. 6, T. 31 for consideration of a certificate of need by the Health Planning Agency (now Department of Community Health), and appeal to the Health Planning Review Board (now Certificate of Need Appeal Panel), establish administrative proceedings within the meaning of O.C.G.A. § 50-18-70. *Clayton County Hosp. Auth. v. Webb*, 208 Ga. App. 91, 430 S.E.2d 89 (1993).

Exhaustion of administrative remedies. — Court of appeals erred in ruling that a society of surgery centers did not have to exhaust administrative remedies under the Georgia Administrative Procedure Act, O.C.G.A. § 50-13-19(a), in the society’s action seeking to prevent the

Georgia Department of Community Health and its Commissioner from requiring its members to respond to certain disputed requests in an annual survey because the futility exception to the exhaustion requirement was inapplicable; the Commissioner’s position in the lawsuit did not establish futility because actions taken to defend a lawsuit could not establish futility. *Ga. Dep’t of Cmty. Health v. Ga. Soc’y of Ambulatory Surgery Ctrs.*, 290 Ga. 628, No. S11G1201, 2012 Ga. LEXIS 206 (2012).

Court of appeals erred in ruling that a society of surgery centers did not have to exhaust administrative remedies under the Georgia Administrative Procedure Act, O.C.G.A. § 50-13-19(a), in the society’s action seeking to prevent the Georgia Department of Community Health (DCH) and its Commissioner from requiring its members to respond to certain disputed requests in an annual survey because the “acting outside statutory authority” exception to the exhaustion requirement did not apply; the society did not allege that DCH was acting wholly outside DCH’s jurisdiction under O.C.G.A. § 31-6-70 to conduct surveys, but instead, the society claimed that the manner in which the survey was being conducted did not fully comply with the procedural requirements of the statute. *Ga. Dep’t of Cmty. Health v. Ga. Soc’y of Ambulatory Surgery Ctrs.*, 290 Ga. 628, No. S11G1201, 2012 Ga. LEXIS 206 (2012).

Certificate of need properly granted. — Division of Health Planning (now Department of Community Health) granting a certificate of need was not arbitrary and capricious as the proposed new institutional health service was reasonably consistent with the relevant goals and objectives of the State Health Plan as set forth in Ga. Comp. R. & Regs. r. 272-2-.08(b)(1), and it did not err in interpreting the 12-month rule in O.C.G.A. § 31-6-2. *Ga. Dep’t of Cmty. Health, Div. of Health Planning v. Gwinnett Hosp. Sys.*, 262 Ga. App. 879, 586 S.E.2d 762 (2003).

Trial court erred in reversing the grant of a certificate of need on the ground that the applicant was attempting to circumvent a cease-and-desist order issued to a

corporation owned by the same individual as the applicant; by seeking the certificate of need, the applicant was not doing anything that the law did not allow, the Department of Community Health held an extensive evidentiary hearing before granting the application, and the trial court improperly disregarded the corporate forms of the corporation and the applicant based on the fact that they were owned by the same individual. *Global Diagnostic Dev., LLC v. Diagnostic Imaging of Atlanta*, 284 Ga. App. 66, 643 S.E.2d 338 (2007).

Certificate of need properly denied. — Given the ability of an area's patients to secure adult open-heart surgery service at a significant rate, the Georgia Health Planning Review Board (now Certificate of Need Appeal Panel) did not exceed the

board's authority, abuse the board's discretion, act arbitrarily or without substantial evidence, or otherwise err by rejecting the hearing officer's determination that a certificate of need (CON) should be issued to the area's medical center under a geographical barrier exception to the Georgia Department of Community Health's CON regulations. The Board determined that neither the use of out-of-state services, nor the reluctance of the area's physicians to refer patients to in-state facilities, created a geographical barrier warranting an exception. *Ga. Dep't of Cmty. Health v. Satilla Health Servs.*, 266 Ga. App. 880, 598 S.E.2d 514 (2004).

Cited in *Ga. Oilmen's Ass'n v. Ga. Dep't of Revenue*, 261 Ga. App. 393, 582 S.E.2d 549 (2003).

OPINIONS OF THE ATTORNEY GENERAL

Increase of ten beds or ten percent of bed capacity requires certificate when new service created. — Though an increase of the lesser of ten beds or ten percent of bed capacity would be excluded from review generally under O.C.G.A. § 31-6-47(a)(15), it is likely that such increases would require a certificate of need if the new beds were used to create new institutional health services. 1983 Op. Att'y Gen. No. 83-34.

Hospital authority may apply for certificate of need outside its area of operation and without the permission of the affected governing authority or hospital authority board in the planned service area; provided, however, that in order to implement the certificate, permission to pursue the health care activity would be required. 1995 Op. Att'y Gen. No. 95-13.

RESEARCH REFERENCES

Am. Jur. 2d. — 40A Am. Jur. 2d, Hospitals and Asylums, §§ 5, 6.

31-6-40.1. Acquisition of health care facilities; penalty for failure to notify the department; limitation on applications; agreement to care for indigent patients; requirements for destination cancer hospitals; notice and hearing provisions for penalties authorized under this Code section.

(a) Any person who acquires a health care facility by stock or asset purchase, merger, consolidation, or other lawful means shall notify the department of such acquisition, the date thereof, and the name and address of the acquiring person. Such notification shall be made in writing to the department within 45 days following the acquisition and

the acquiring person may be fined by the department in the amount of \$500.00 for each day that such notification is late. Such fine shall be paid into the state treasury.

(b) The department may limit the time periods during which it will accept applications for the following health care facilities:

- (1) Skilled nursing facilities;
- (2) Intermediate care facilities; and
- (3) Home health agencies,

to only such times after the department has determined there is an unmet need for such facilities. The department shall make a determination as to whether or not there is an unmet need for each type of facility at least every six months and shall notify those requesting such notification of that determination.

(b.1) The department may establish, by rule, set times during the year in which applications for capital projects exceeding the threshold amounts in:

- (1) Paragraph (14) of Code Section 31-6-2; and
- (2) Paragraph (2) or (3) of subsection (a) of Code Section 31-6-40 shall be accepted.

(c) The department may require that any applicant for a certificate of need agree to provide a specified amount of clinical health services to indigent patients as a condition for the grant of a certificate of need; provided, however, that each facility granted a certificate of need by the department as a destination cancer hospital shall be required to provide uncompensated indigent or charity care for residents of Georgia which meets or exceeds 3 percent of such destination cancer hospital's adjusted gross revenues and provide care to Medicaid beneficiaries. A grantee or successor in interest of a certificate of need or an authorization to operate under this chapter which violates such an agreement or violates any conditions imposed by the department relating to such services, whether made before or after July 1, 2008, shall be liable to the department for a monetary penalty in the amount of the difference between the amount of services so agreed to be provided and the amount actually provided and may be subject to revocation of its certificate of need, in whole or in part, by the department pursuant to Code Section 31-6-45. Any penalty so recovered shall be paid into the state treasury.

(c.1)(1) A destination cancer hospital that does not meet an annual patient base composed of a minimum of 65 percent of patients who reside outside this state in a calendar year shall be fined \$2 million for the first year of noncompliance, \$4 million for the second consec-

utive year of noncompliance, and \$6 million for the third consecutive year of noncompliance. Such fine amount shall reset to \$2 million after any year of compliance. In the event that a destination cancer hospital does not meet an annual patient base composed of a minimum of 65 percent of patients who reside outside this state for three calendar years in any five-year period, such hospital shall be fined an additional amount of \$8 million. It is the intent of the General Assembly that all revenues collected from any such fines shall be dedicated and deposited by the department into the Indigent Care Trust Fund created pursuant to Code Section 31-8-152.

(2) In the event a certificate of need for a destination cancer hospital is revoked pursuant to this subsection, such hospital shall be subject to fines pursuant to subsection (c) of Code Section 31-6-45 for operating without a certificate of need.

(3) In addition to the annual report required pursuant to Code Section 31-6-70, a destination cancer hospital shall submit an annual statement, in accordance with timeframes and a format specified by the department, affirming that the hospital has met an annual patient base composed of a minimum of 65 percent of patients who reside outside this state. The chief executive officer of the destination cancer hospital shall certify under penalties of perjury that the statement as prepared accurately reflects the composition of the annual patient base. The department shall have the authority to inspect any books, records, papers, or other information pursuant to subsection (e) of Code Section 31-6-45 of the destination cancer hospital to confirm the information provided on such statement or any other information required of the destination cancer hospital. Nothing in this paragraph shall be construed to require the release of any information which would violate the Health Insurance Portability and Accountability Act of 1996, P.L. 104-191.

(d) Penalties authorized under this Code section shall be subject to the same notices and hearing for the levy of fines under Code Section 31-6-45. (Code 1981, § 31-6-40.1, enacted by Ga. L. 1991, p. 1419, § 1; Ga. L. 1999, p. 296, § 22; Ga. L. 2008, p. 12, § 1-1/SB 433; Ga. L. 2009, p. 8, § 31/SB 46.)

Editor's notes. — Ga. L. 2008, p. 12, § 3-1/SB 433, not codified by the General Assembly, provides that the amendment to this Code section shall only apply to applications submitted on or after July 1, 2008.

31-6-40.2. New perinatal services.

(a) As used in this Code section only, the term:

(1) "Certificate of need application" means an application for a certificate of need filed with the department, any amendments

thereto, and any other written material relating to the application and filed by the applicant with the department.

(2) "First three years of operation" means the first three consecutive 12 month periods beginning on the first day of a new perinatal service's first full calendar month of operation.

(3) "First year of operation" means the first consecutive 12 month period beginning on the first day of a new perinatal service's first full calendar month of operation.

(4) "New perinatal service" means a perinatal service whose first year of operation ends after April 6, 1992.

(5) "Perinatal service" means obstetric and neonatal services relating to managing high-risk pregnancies, care for moderately ill newborns, care for all maternal and fetal complications either on site or by referral, and operation of neonatal intensive care units equipped to treat critically ill newborns; provided however, this shall not include basic perinatal services as defined in Code Section 31-6-2.

(6) "Year" means one of the three consecutive 12 month periods in a new perinatal service's first 36 months of operation.

(b)(1) A new perinatal service shall provide uncompensated indigent or charity care in an amount which meets or exceeds the department's established minimum at the time the department issued the certificate of need approval for such service for each of the service's first three years of operation; provided, however, that if the certificate of need application under which a new perinatal service was approved included a commitment that uncompensated indigent or charity care would be provided in an amount greater than the established minimum for any time period described in the certificate of need application that falls completely within such new perinatal service's first three years of operation, such new perinatal service shall provide indigent or charity care in an amount which meets or exceeds the amount committed in the certificate of need application for each time period described in the certificate of need application that falls completely within the service's first three years of operation.

(2) The department shall revoke the certificate of need and authority to operate of a new perinatal service if after notice to the grantee of the certificate or such grantee's successors, and after opportunity for a fair hearing pursuant to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," the department determines that such new perinatal service has failed to provide indigent or charity care in accordance with the requirements of paragraph (1) of this subsection and such failure is determined by the department to be for reasons

substantially within the perinatal service provider's control. The department shall provide the requisite notice, conduct the fair hearing, if requested, and render its determination within 90 days after the end of the first year, or, if applicable, the first time period described in paragraph (1) of this subsection during which the new perinatal service fails to provide indigent or charity care in accordance with the requirements of paragraph (1) of this subsection. Revocation shall be effective 30 days after the date of the determination by the department that the requirements of paragraph (1) of this subsection have not been met.

(c)(1) A new perinatal service shall achieve the standard number of births specified in the state health plan in effect at the time of the issuance of the certificate of need approval by the department in at least one year during its first three years of operation.

(2) The department shall revoke the certificate of need and authority to operate of a new perinatal service if after notice to the grantee of the certificate of need or such grantee's successors, and after opportunity for a fair hearing pursuant to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," the department determines that such new perinatal service has failed to comply with the applicable requirements of paragraph (1) of this subsection and such failure is determined by the department to be for reasons substantially within the perinatal service provider's control. The department shall provide the requisite notice, conduct the fair hearing, if requested, and render its determination within 90 days after the end of the new perinatal service's first three years of operation. Revocation shall be effective 30 days after the date of the determination by the department that the requirements of this paragraph or paragraph (1) of this subsection have not been met.

(d) Nothing contained in this Code section shall limit the department's authority to regulate perinatal services in ways or for time periods not addressed by the provisions of this Code section. (Code 1981, § 31-6-40.2, enacted by Ga. L. 1992, p. 1068, § 1; Ga. L. 1999, p. 296, § 22; Ga. L. 2008, p. 12, § 1-1/SB 433.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1992, "April 6, 1992" was substituted for "the date this Code Section becomes effective" in paragraph (a)(4), and "this paragraph or paragraph (1)" was substituted for "paragraph (1) or (2)" in the last sentence of paragraph (c)(2).

Pursuant to Code Section 28-9-5, in 2008, "service's" was substituted for "service" in paragraph (a)(6).

Editor's notes. — Ga. L. 2008, p. 12, § 3-1/SB 433, not codified by the General Assembly, provides that the amendment to this Code section shall only apply to applications submitted on or after July 1, 2008.

Law reviews. — For note on 1992 enactment of this Code section, see 9 Ga. St. U.L. Rev. 265 (1992).

31-6-41. Scope and term of validity of certificate.

(a) A certificate of need shall be valid only for the defined scope, location, cost, service area, and person named in an application, as it may be amended, and as such scope, location, service area, cost, and person are approved by the department, unless such certificate of need owned by an existing health care facility is transferred to a person who acquires such existing facility. In such case, the certificate of need shall be valid for the person who acquires such a facility and for the scope, location, cost, and service area approved by the department. However, in reviewing an application to relocate all or a portion of an existing skilled nursing facility, intermediate care facility, or intermingled nursing facility, the department may allow such facility to divide into two or more such facilities if the department determines that the proposed division is financially feasible and would be consistent with quality patient care.

(b) A certificate of need shall be valid and effective for a period of 12 months after it is issued, or such greater period of time as may be specified by the department at the time the certificate of need is issued. Within the effective period after the grant of a certificate of need, the applicant of a proposed project shall fulfill reasonable performance and scheduling requirements specified by the department, by rule, to assure reasonable progress toward timely completion of a project.

(c) By rule, the department may provide for extension of the effective period of a certificate of need when an applicant, by petition, makes a good faith showing that the conditions to be specified according to subsection (b) of this Code section will be performed within the extended period and that the reasons for the extension are beyond the control of the applicant. (Code 1981, § 31-6-41, enacted by Ga. L. 1983, p. 1566, § 1; Ga. L. 1999, p. 296, § 22; Ga. L. 2008, p. 12, § 1-1/SB 433; Ga. L. 2009, p. 8, § 31/SB 46.)

Editor's notes. — Ga. L. 2008, p. 12, § 3-1/SB 433, not codified by the General Assembly, provides that the amendment

to this Code section shall only apply to applications submitted on or after July 1, 2008.

JUDICIAL DECISIONS

Cancellation of certificate of need proper. — Trial court properly affirmed an administrative decision cancelling a nursing home's certificate of need as the nursing home failed to comply with applicable statutory and regulatory requirements with regard to completing the project timely and providing documentation

that ongoing construction was being undertaken. Further, several site inspections established that, in fact, no construction was being undertaken for the project. *Southern Crescent Rehab. & Ret. Ctr., Inc. v. Ga. Dep't of Cmty. Health*, 290 Ga. App. 863, 660 S.E.2d 792 (2008), cert. denied, 2008 Ga. LEXIS 679 (2008).

31-6-42. Qualifications for issuance of certificate.

(a) The written findings of fact and decision, with respect to the department's grant or denial of a certificate of need, shall be based on the applicable considerations specified in this Code section and reasonable rules promulgated by the department interpretive thereof. The department shall issue a certificate of need to each applicant whose application is consistent with the following considerations and such rules deemed applicable to a project, except as specified in subsection (f) of Code Section 31-6-43:

(1) The proposed new institutional health services are reasonably consistent with the relevant general goals and objectives of the state health plan;

(2) The population residing in the area served, or to be served, by the new institutional health service has a need for such services;

(3) Existing alternatives for providing services in the service area the same as the new institutional health service proposed are neither currently available, implemented, similarly utilized, nor capable of providing a less costly alternative, or no certificate of need to provide such alternative services has been issued by the department and is currently valid;

(4) The project can be adequately financed and is, in the immediate and long term, financially feasible;

(5) The effects of new institutional health service on payors for health services, including governmental payors, are not unreasonable;

(6) The costs and methods of a proposed construction project, including the costs and methods of energy provision and conservation, are reasonable and adequate for quality health care;

(7) The new institutional health service proposed is reasonably financially and physically accessible to the residents of the proposed service area;

(8) The proposed new institutional health service has a positive relationship to the existing health care delivery system in the service area;

(9) The proposed new institutional health service encourages more efficient utilization of the health care facility proposing such service;

(10) The proposed new institutional health service provides, or would provide, a substantial portion of its services to individuals not residing in its defined service area or the adjacent service area;

(11) The proposed new institutional health service conducts biomedical or behavioral research projects or new service development which is designed to meet a national, regional, or state-wide need;

(12) The proposed new institutional health service meets the clinical needs of health professional training programs which request assistance;

(13) The proposed new institutional health service fosters improvements or innovations in the financing or delivery of health services, promotes health care quality assurance or cost effectiveness, or fosters competition that is shown to result in lower patient costs without a loss of the quality of care;

(14) The proposed new institutional health service fosters the special needs and circumstances of health maintenance organizations;

(15) The proposed new institutional health service meets the department's minimum quality standards, including, but not limited to, standards relating to accreditation, minimum volumes, quality improvements, assurance practices, and utilization review procedures;

(16) The proposed new institutional health service can obtain the necessary resources, including health care personnel and management personnel; and

(17) The proposed new institutional health service is an underrepresented health service, as determined annually by the department. The department shall, by rule, provide for an advantage to equally qualified applicants that agree to provide an underrepresented service in addition to the services for which the application was originally submitted.

(b) In the case of applications for the development or offering of a new institutional health service or health care facility for osteopathic medicine, the need for such service or facility shall be determined on the basis of the need and availability in the community for osteopathic services and facilities in addition to the considerations in subsection (a) of this Code section. Nothing in this chapter shall, however, be construed as otherwise recognizing any distinction between allopathic and osteopathic medicine.

(b.1) In the case of applications for the construction, development, or establishment of a destination cancer hospital, the applicable considerations as to the need for such service shall not include paragraphs (1), (2), (3), (7), (8), (10), (11), and (14) of subsection (a) of this Code section but shall include:

(1) Paragraphs (4), (5), (6), (9), (12), (13), (15), (16), and (17) of subsection (a) of this Code section;

(2) That the proposed new destination cancer hospital can demonstrate, based on historical data from the applicant or its affiliated entities, that its annual patient base shall be composed of a minimum of 65 percent of patients who reside outside of the State of Georgia;

(3) That the proposed new destination cancer hospital states its intent to provide uncompensated indigent or charity care which shall meet or exceed 3 percent of its adjusted gross revenues and provide care to Medicaid beneficiaries;

(4) That the proposed new destination cancer hospital shall conduct biomedical or behavioral research projects or service development which is designed to meet a national or regional need;

(5) That the proposed new destination cancer hospital shall be reasonably financially and physically accessible;

(6) That the proposed new destination cancer hospital shall have a positive relationship to the existing health care delivery system on a regional basis;

(6.1) That the proposed new destination cancer hospital shall enter into a hospital transfer agreement with one or more hospitals within a reasonable distance from the destination cancer hospital or the medical staff at the destination cancer hospital has admitting privileges or other acceptable documented arrangements with such hospital or hospitals to ensure the necessary backup for the destination cancer hospital for medical complications. The destination cancer hospital shall have the capability to transfer a patient immediately to a hospital within a reasonable distance from the destination cancer hospital with adequate emergency room services. Hospitals shall not unreasonably deny a transfer agreement with the destination cancer hospital. In the event that a destination cancer hospital and another hospital cannot agree to the terms of a transfer agreement as required by this paragraph, the department shall mediate between such parties for a period of no more than 45 days. If an agreement is still not reached within such 45 day period, the parties shall enter into binding arbitration conducted by the department;

(7) That an applicant for a new destination cancer hospital shall document in its application that the new facility is not predicted to be detrimental to existing hospitals within the planning area. Such demonstration shall be made by providing an analysis in such application that compares current and projected changes in market share and payor mix for such applicant and such existing hospitals within the planning area. Impact on an existing hospital shall be

determined to be adverse if, based on the utilization projected by the applicant, such existing hospital would have a total decrease of 10 percent or more in its average annual utilization, as measured by patient days for the two most recent and available preceding calendar years of data; and

(8) That the destination cancer hospital shall express its intent to participate in medical staffing work force development activities.

(b.2) In the case of applications for basic perinatal services in counties where:

(1) Only one civilian health care facility or health system is currently providing basic perinatal services; and

(2) There are not at least three different health care facilities in a contiguous county providing basic perinatal services,

the department shall not apply the consideration contained in paragraph (2) of subsection (a) of this Code section.

(c) If the denial of an application for a certificate of need for a new institutional health service proposed to be offered or developed by a:

(1) Minority administered hospital facility serving a socially and economically disadvantaged minority population in an urban setting; or

(2) Minority administered hospital facility utilized for the training of minority medical practitioners

would adversely impact upon the facility and population served by said facility, the special needs of such hospital facility and the population served by said facility for the new institutional health service shall be given extraordinary consideration by the department in making its determination of need as required by this Code section. The department shall have the authority to vary or modify strict adherence to the provisions of this chapter and the rules enacted pursuant hereto in considering the special needs of such facility and its population served and to avoid an adverse impact on the facility and the population served thereby. For purposes of this subsection, the term "minority administered hospital facility" means a hospital controlled or operated by a governing body or administrative staff composed predominantly of members of a minority race.

(d) For the purposes of the considerations contained in this Code section and in the department's applicable rules, relevant data which were unavailable or omitted when the state health plan or rules were prepared or revised may be considered in the evaluation of a project.

(e) The department shall specify in its written findings of fact and decision which of the considerations contained in this Code section and

the department's applicable rules are applicable to an application and its reasoning as to and evidentiary support for its evaluation of each such applicable consideration and rule. (Code 1981, § 31-6-42, enacted by Ga. L. 1983, p. 1566, § 1; Ga. L. 1984, p. 22, § 31; Ga. L. 1999, p. 296, § 22; Ga. L. 2008, p. 12, § 1-1/SB 433.)

Editor's notes. — Ga. L. 2008, p. 12, § 3-1/SB 433, not codified by the General Assembly, provides that the amendment

to this Code section shall only apply to applications submitted on or after July 1, 2008.

JUDICIAL DECISIONS

Criteria used by Review Board. — Review Board (now Certificate of Need Appeal Panel) could use not only the considerations listed in O.C.G.A. § 31-6-42, but also State Health Planning and Development Agency (now Department of Community Health) standards and criteria in interpreting those standards to make a decision in the case before the board. *North Fulton Community Hosp. v. State Health Planning & Dev. Agency*, 168 Ga. App. 801, 310 S.E.2d 764 (1983).

In determining whether a given application was consistent with the considerations set forth in O.C.G.A. § 31-6-42 and the State Health Planning Agency (now Department of Community Health) rules, the board was entitled to place more emphasis on one consideration than another absent some mandatory language to the contrary, and such emphasis was entitled to great deference by a reviewing court. *Medical Ctr., Inc. v. State Health Planning Agency*, 219 Ga. App. 334, 464 S.E.2d 925 (1995).

Opposing hospitals failed to show harm from alleged deficiencies in hearing officer's decision. — Two hospitals that opposed an application for a certificate of need for perinatal services failed to show any harm resulting from alleged deficiencies in the initial decision issued by a hearing officer of the Department of Community Health which prejudiced the hospitals' ability to present their case to the hearing officer. The hospitals could have, but did not, present additional

evidence pursuant to O.C.G.A. § 31-6-44. *Palmyra Park Hosp., Inc. v. Phoebe Sumter Med. Ctr.*, 310 Ga. App. 487, 714 S.E.2d 71 (2011).

Evidence sustaining denial of applications. — Determination by the State Health Planning Agency (now Department of Community Health) that the establishment of open heart surgery service at two applying hospitals would adversely impact existing service was supported by evidence that open heart service at another hospital would be reduced to less than 350 procedures annually and by more than ten percent of its total annual volume. *Hospital Auth. v. State Health Planning Agency*, 211 Ga. App. 407, 438 S.E.2d 912 (1993).

Trial court erred by reversing a decision of the Department of Community Health denying an ambulatory surgery center's application for a certificate of need to develop an orthopedic center in a city as the trial court substituted the court's own judgment for that of the agency since the Department made a finding that the service area already had a surplus of operating rooms, which were significantly underutilized, and the ambulatory surgery center failed to prove that any specific patient population was in need of the new center or that any barrier to quality care existed. *Surgery Ctr., LLC v. Hughston Surgical Inst., LLC*, 293 Ga. App. 879, 668 S.E.2d 326 (2008).

Cited in *St. Joseph's Hosp. v. Hospital Corp. of Am.*, 795 F.2d 948 (11th Cir. 1986).

31-6-43. Acceptance or rejection of application for certificate.

(a) At least 30 days prior to submitting an application for a certificate of need for clinical health services, a person shall submit a letter of intent to the department. The department shall provide by rule a process for submitting letters of intent and a mechanism by which applications may be filed to compete with and be reviewed comparatively with proposals described in submitted letters of intent.

(b) Each application for a certificate of need shall be reviewed by the department and within ten working days after the date of its receipt a determination shall be made as to whether the application complies with the rules governing the preparation and submission of applications. If the application complies with the rules governing the preparation and submission of applications, the department shall declare the application complete for review, shall accept and date the application, and shall notify the applicant of the timetable for its review. The department shall also notify a newspaper of general circulation in the county in which the project shall be developed that the application has been deemed complete. The department shall also notify the appropriate regional commission and the chief elected official of the county and municipal governments, if any, in whose boundaries the proposed project will be located that the application is complete for review. If the application does not comply with the rules governing the preparation and submission of applications, the department shall notify the applicant in writing and provide a list of all deficiencies. The applicant shall be afforded an opportunity to correct such deficiencies, and upon such correction, the application shall then be declared complete for review within ten days of the correction of such deficiencies, and notice given to a newspaper of general circulation in the county in which the project shall be developed that the application has been so declared. The department shall also notify the appropriate regional commission and the chief elected official of the county and municipal governments, if any, in whose boundaries the proposed project will be located that the application is complete for review or when in the determination of the department a significant amendment is filed.

(c) The department shall specify by rule the time within which an applicant may amend its application. The department may request an applicant to make amendments. The department decision shall be made on an application as amended, if at all, by the applicant.

(d) There shall be a time limit of 120 days for review of a project, beginning on the day the department declares the application complete for review or in the case of applications joined for comparative review, beginning on the day the department declares the final application complete. The department may adopt rules for determining when it is

not practicable to complete a review in 120 days and may extend the review period upon written notice to the applicant but only for an extended period of not longer than an additional 30 days. The department shall adopt rules governing the submission of additional information by the applicant and for opposing an application.

(e) To allow the opportunity for comparative review of applications, the department may provide by rule for applications for a certificate of need to be submitted on a timetable or batching cycle basis no less often than two times per calendar year for each clinical health service. Applications for services, facilities, or expenditures for which there is no specified batching cycle may be filed at any time.

(f) The department may order the joinder of an application which is determined to be complete by the department for comparative review with one or more subsequently filed applications declared complete for review during the same batching cycle when:

(1) The first and subsequent applications involve similar clinical health service projects in the same service area or overlapping service areas; and

(2) The subsequent applications are filed and are declared complete for review within 30 days of the date the first application was declared complete for review.

Following joinder of the first application with subsequent applications, none of the subsequent applications so joined may be considered as a first application for the purposes of future joinder. The department shall notify the applicant to whose application a joinder is ordered and all other applicants previously joined to such application of the fact of each joinder pursuant to this subsection. In the event one or more applications have been joined pursuant to this subsection, the time limits for department action for all of the applicants shall run from the latest date that any one of the joined applications was declared complete for review. In the event of the consideration of one or more applications joined pursuant to this subsection, the department may award no certificate of need or one or more certificates of need to the application or applications, if any, which are consistent with the considerations contained in Code Section 31-6-42, the department's applicable rules, and the award of which will best satisfy the purposes of this chapter.

(g) The department shall review the application and all written information submitted by the applicant in support of the application and all information submitted in opposition to the application to determine the extent to which the proposed project is consistent with the applicable considerations stated in Code Section 31-6-42 and in the department's applicable rules. During the course of the review, the

department staff may request additional information from the applicant as deemed appropriate. Pursuant to rules adopted by the department, a public hearing on applications covered by those regulations may be held prior to the date of the department's decision thereon. Such rules shall provide that when good cause has been shown, a public hearing shall be held by the department. Any interested person may submit information to the department concerning an application, and an applicant shall be entitled to notice of and to respond to any such submission.

(h) The department shall provide the applicant an opportunity to meet with the department to discuss the application and to provide an opportunity to submit additional information. Such additional information shall be submitted within the time limits adopted by the department. The department shall also provide an opportunity for any party that is opposed to an application to meet with the department and to provide additional information to the department. In order for an opposing party to have standing to appeal an adverse decision pursuant to Code Section 31-6-44, such party must attend and participate in an opposition meeting.

(i) Unless extended by the department for an additional period of up to 30 days pursuant to subsection (d) of this Code section, the department shall, no later than 120 days after an application is determined to be complete for review, or, in the event of joined applications, 120 days after the last application is declared complete for review, provide written notification to an applicant of the department's decision to issue or to deny issuance of a certificate of need for the proposed project. Such notice shall contain the department's written findings of fact and decision as to each applicable consideration or rule and a detailed statement of the reasons and evidentiary support for issuing or denying a certificate of need for the action proposed by each applicant. The department shall also mail such notification to the appropriate regional commission and the chief elected official of the county and municipal governments, if any, in whose boundaries the proposed project will be located. In the event such decision is to issue a certificate of need, the certificate of need shall be effective on the day of the decision unless the decision is appealed to the Certificate of Need Appeal Panel in accordance with this chapter. Within seven days of the decision, the department shall publish notice of its decision to grant or deny an application in the same manner as it publishes notice of the filing of an application.

(j) Should the department fail to provide written notification of the decision within the time limitations set forth in this Code section, an application shall be deemed to have been approved as of the one hundred twenty-first day following notice from the department that an application, or the last of any applications joined pursuant to subsection (f) of this Code section, is declared "complete for review."

(k) Notwithstanding other provisions of this article, when the Governor has declared a state of emergency in a region of the state, existing health care facilities in the affected region may seek emergency approval from the department to make expenditures in excess of the capital expenditure threshold or to offer services that may otherwise require a certificate of need. The department shall give special expedited consideration to such requests and may authorize such requests for good cause. Once the state of emergency has been lifted, any services offered by an affected health care facility under this subsection shall cease to be offered until such time as the health care facility that received the emergency authorization has requested and received a certificate of need. For purposes of this subsection, "good cause" means that authorization of the request shall directly resolve a situation posing an immediate threat to the health and safety of the public. The department shall establish, by rule, procedures whereby requirements for the process of review and issuance of a certificate of need may be modified and expedited as a result of emergency situations. (Code 1981, § 31-6-43, enacted by Ga. L. 1983, p. 1566, § 1; Ga. L. 1984, p. 22, § 31; Ga. L. 1989, p. 1317, §§ 6.15, 6.16; Ga. L. 1999, p. 296, § 22; Ga. L. 2008, p. 12, § 1-1/SB 433; Ga. L. 2008, p. 181, § 15/HB 1216; Ga. L. 2012, p. 775, § 31/HB 942.)

The 2012 amendment, effective May 1, 2012, part of an Act to revise, modernize, and correct the Code, revised language in the last sentence of subsection (i).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2008, subsection (g), as enacted by Ga. L. 2008, p. 12, § 1-1, was redesignated as subsection (k).

Editor's notes. — Ga. L. 2008, p. 12, § 3-1/SB 433, not codified by the General Assembly, provides that the amendment to this Code section shall only apply to applications submitted on or after July 1, 2008.

JUDICIAL DECISIONS

Certificate of need properly denied.

— Given the ability of an area's patients to secure adult open-heart surgery service at a significant rate, the Georgia Health Planning Review Board (now Certificate of Need Appeal Panel) did not exceed the board's authority, abuse the board's discretion, act arbitrarily or without substantial evidence, or otherwise err by rejecting the hearing officer's determination that a certificate of need (CON) should be issued to the area's medical center under a geographical barrier exception to the Georgia Department of Community Health's CON regulations. The Board determined that neither the use of out-of-state services, nor the reluctance of

the area's physicians to refer patients to in-state facilities, created a geographical barrier warranting an exception. *Ga. Dep't of Cmty. Health v. Satilla Health Servs.*, 266 Ga. App. 880, 598 S.E.2d 514 (2004).

Date time begins. — Date an agency made the determination that a reapplication was complete was the day the 90-day time limit of subsection (c) of O.C.G.A. § 31-6-43 for ruling on the reapplication began to run. *State Health Planning Agency v. Cribb Indus., Inc.*, 204 Ga. App. 285, 419 S.E.2d 123 (1992).

Opposing hospitals failed to show harm from alleged deficiencies in hearing officer's decision. — Two hos-

pitals that opposed an application for a certificate of need for perinatal services failed to show any harm resulting from alleged deficiencies in the initial decision issued by a hearing officer of the Department of Community Health which prejudiced the hospitals' ability to present their case to the hearing officer. The hospitals could have, but did not, present additional evidence pursuant to O.C.G.A. § 31-6-44. *Palmyra Park Hosp., Inc. v. Phoebe Sumter Med. Ctr.*, 310 Ga. App. 487, 714 S.E.2d 71 (2011).

Timely review of reapplication. — State Health Planning Agency's (now Department of Community Health) extension of the time for review of a nursing home application beyond the 90 day time limit set forth in subsection (c) of O.C.G.A. § 31-6-43 was warranted since the agency had offered to provide the applicant with an opportunity to meet and discuss the

application and to submit additional evidence, but the applicant requested a delay of the meeting that made a decision within the 90 day time limit impracticable. *State Health Planning Agency v. Cribb Indus., Inc.*, 204 Ga. App. 285, 419 S.E.2d 123 (1992).

Department decisions entitled to deference. — Appellate court must defer to decisions on the issuance of certificates of need of the Georgia Department of Community Health, which is charged with balancing numerous factors in determining the need for additional medical facilities, as it is not feasible to have comprehensive medical facilities in every Georgia town, and the judiciary is ill-equipped to resolve the complex issues inherent in state health planning. *Ga. Dep't of Cmty. Health v. Satilla Health Servs.*, 266 Ga. App. 880, 598 S.E.2d 514 (2004).

31-6-44. Certificate of Need Appeal Panel.

(a) Effective July 1, 2008, there is created the Certificate of Need Appeal Panel, which shall be an agency separate and apart from the department and shall consist of a panel of independent hearing officers. The purpose of the appeal panel shall be to serve as a panel of independent hearing officers to review the department's initial decision to grant or deny a certificate of need application. The Health Planning Review Board which existed on June 30, 2008, shall cease to exist after that date and the Certificate of Need Appeal Panel shall be constituted effective July 1, 2008, pursuant to this Code section. The terms of all members of the Health Planning Review Board serving as such on June 30, 2008, shall automatically terminate on such date.

(b) On and after July 1, 2008, the appeal panel shall be composed of five members appointed by the Governor for a term of up to four years each. The Governor shall appoint to the appeal panel attorneys who practice law in this state and who are familiar with the health care industry but who do not have a financial interest in or represent or have any compensation arrangement with any health care facility. Each member of the appeal panel shall be an active member of the State Bar of Georgia in good standing, and each attorney shall have maintained such active status for the five years immediately preceding such person's appointment. The Governor shall name from among such members a chairperson and a vice chairperson of the appeal panel. The vice chairperson shall have the same authority as the chairperson; provided, however, the vice chairperson shall not exercise such authority unless expressly delegated by the chairperson or in the event the

chairperson becomes incapacitated, as determined by the Governor. Vacancies on the appeal panel caused by resignation, death, or any other cause shall be filled for the unexpired term in the same manner as the original appointment. No person required to register with the Secretary of State as a lobbyist or registered agent shall be eligible for appointment by the Governor to the appeal panel.

(c) The appeal panel shall promulgate reasonable rules for its operation and rules of procedure for the conduct of initial administrative appeal hearings held by the appointed hearing officers, including an appropriate fee schedule for filing such appeals. Members of the appeal panel shall serve as hearing officers for appeals that are assigned to them on a random basis by the chairperson of the appeal panel. The members of the appeal panel shall receive no salary but shall be reimbursed for their expenses in attending meetings and for transportation costs as authorized by Code Section 45-7-21, which provides for compensation and allowances of certain state officials; provided, however, that the chairperson and vice chairperson of the appeal panel shall also be compensated for their services rendered to the appeal panel outside of attendance at an appeal panel meeting, such as for time spent assigning hearing officers, the amount of which compensation shall be determined according to regulations of the Department of Administrative Services. Appeal panel members shall receive compensation for the administration of the cases assigned to them, including prehearing, hearing, and posthearing work, in an amount determined to be appropriate and reasonable by the Department of Administrative Services. Such compensation to the members of the appeal panel shall be made by the Department of Administrative Services.

(d) Any applicant for a project, any competing applicant in the same batching cycle, any competing health care facility that has notified the department prior to its decision that such facility is opposed to the application before the department, or any county or municipal government in whose boundaries the proposed project will be located who is aggrieved by a decision of the department shall have the right to an initial administrative appeal hearing before an appeal panel hearing officer or to intervene in such hearing. Such request for hearing or intervention shall be filed with the chairperson of the appeal panel within 30 days of the date of the decision made pursuant to Code Section 31-6-43. In the event an appeal is filed by a competing applicant, or any competing health care facility, or any county or municipal government, the appeal shall be accompanied by payment of such fee as is established by the appeal panel. In the event an appeal is requested, the chairperson of the appeal panel shall appoint a hearing officer for each such hearing within 30 days after the date the appeal is received. Within 14 days after the appointment of the hearing officer,

such hearing officer shall confer with the parties and set the date or dates for the hearing, provided that no hearing shall be scheduled less than 60 days nor more than 120 days after the filing of the request for a hearing, unless the applicant consents or, in the case of competing applicants, all applicants consent to an extension of this time period to a specified date. Unless the applicant consents or, in the case of competing applicants, all applicants consent to an extension of said 120 day period, any hearing officer who regularly fails to commence a hearing within the required time period shall not be eligible for continued service as a hearing officer for the purposes of this Code section. The hearing officer shall have the authority to dispose of all motions made by any party before the issuance of the hearing officer's decision and shall make such rulings as may be required for the conduct of the hearing.

(e) In fulfilling the functions and duties of this chapter, the hearing officer shall act, and the hearing shall be conducted as a full evidentiary hearing, in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," relating to contested cases, except as otherwise specified in this Code section. Subject to the provisions of Article 4 of Chapter 18 of Title 50, all files, working papers, studies, notes, and other writings or information used by the department in making its decision shall be public records and available to the parties, and the hearing officer may permit each party to exercise such reasonable rights of prehearing discovery of such information used by the parties as will expedite the hearing.

(f) In addition to evidence submitted to the department, a party may present any additional relevant evidence to the appeal panel hearing officer reviewing the decision of the department if the evidence was not reasonably available to the party presenting the evidence at the time of the department's review. The burden of proof as to whether the evidence was reasonably available shall be on the party attempting to introduce the new evidence. The issue for the decision by the hearing officer shall be whether, and the hearing officer shall order the issuance of a certificate of need if, in the hearing officer's judgment, the application is consistent with the considerations as set forth in Code Section 31-6-42 and the department's rules, as the hearing officer deems such considerations and rules applicable to the review of the project. The appeal hearing conducted by the appeal panel hearing officer shall be a de novo review of the decision of the department. The hearing officer shall also consider:

- (1) Whether the department committed prejudicial procedural error in its consideration of the application;
- (2) Whether the appeal lacks substantial justification; and
- (3) Whether such appeal was undertaken primarily for the purpose of delay or harassment.

The burden of proof shall be on the appellant. Appellants or applicants shall proceed first with their cases before the hearing officer in the order determined by the hearing officer, and the department, if a party, shall proceed last. In the event of a consolidated hearing on applications which were joined for comparative review pursuant to subsection (f) of Code Section 31-6-43, the hearing officer shall have the same powers specified for the department in subsection (f) of Code Section 31-6-43 to order the issuance of no certificate of need or one or more certificates of need.

(g) All evidence shall be presented at the initial administrative appeal hearing conducted by the appointed hearing officer. A party or intervenor may present any relevant evidence on all issues raised by the hearing officer or any party to the hearing or revealed during discovery and shall not be limited to evidence or information presented to the department prior to its decision, except that an applicant may not present a new need study or analysis responsive to the general need consideration or service-specific need formula as provided in the applicable rules that is substantially different from any such study or analysis submitted to the department prior to its decision and that could have reasonably been available for submission. The hearing officer may consider the latest data available, including updates of studies previously submitted, in deciding whether an application is consistent with the applicable considerations or rules. The hearing officer shall consider the applicable considerations and rules in effect on the date the appeal is filed, even if the provisions of those considerations or rules were changed after the department's decision. The hearing officer may remand a matter to the department if the hearing officer determines that it would be beneficial for the department to consider new data, studies, or analyses that were not available before the decision or changes to the provisions of the applicable considerations or rules made after the department's decision. The hearing officer shall establish the time deadlines for completion of the remand and shall retain jurisdiction of the matter throughout the completion of the remand.

(h) After the issuance of a decision by the department pursuant to Code Section 31-6-43, no party to an appeal hearing, nor any person on behalf of such party, including the department, shall make any ex parte contact with the appeal panel hearing officer appointed to conduct the appeal hearing, any other member of the appeal panel, or the commissioner in regard to a decision under appeal.

(i) Within 30 days after the conclusion of the hearing, the hearing officer shall make written findings of fact and conclusions of law as to each consideration as set forth in Code Section 31-6-42 and the department's rules, including a detailed statement of the reasons for

the decision of the hearing officer. If any party has alleged that an appeal lacks substantial justification or was undertaken primarily for the purpose of delay or harassment, the decision of the hearing officer shall make findings of fact addressing the merits of the allegation. The hearing officer shall file such decision with the chairperson of the appeal panel who shall serve such decision upon all parties, and shall transmit the administrative record to the commissioner. Any party, including the department, which disputes any finding of fact or conclusion of law rendered by the hearing officer in such hearing officer's decision and which wishes to appeal that decision may appeal to the commissioner and shall file its specific objections with the commissioner or his or her designee within 30 days of the date of the hearing officer's decision pursuant to rules adopted by the department.

(j) The decision of the appeal panel hearing officer will become the final decision of the department upon the sixty-first day following the date of the decision unless an objection thereto is filed with the commissioner within the time limit established in subsection (i) of this Code section.

(k)(1) In the event an appeal of the hearing officer's decision is filed, the commissioner may adopt the hearing officer's order as the final order of the department or the commissioner may reject or modify the conclusions of law over which the department has substantive jurisdiction and the interpretation of administrative rules over which it has substantive jurisdiction. By rejecting or modifying such conclusion of law or interpretation of administrative rule, the department must state with particularity its reasons for rejecting or modifying such conclusion of law or interpretation of administrative rule and must make a finding that its substituted conclusion of law or interpretation of administrative rule is as or more reasonable than that which was rejected or modified. Rejection or modification of conclusions of law may not form the basis for rejection or modification of findings of fact. The commissioner may not reject or modify the findings of fact unless the commissioner first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based upon any competent substantial evidence or that the proceedings on which the findings were based did not comply with the essential requirements of law.

(2) If, before the date set for the commissioner's decision, application is made to the commissioner for leave to present additional evidence and it is shown to the satisfaction of the commissioner that the additional evidence is material and there were good reasons for failure to present it in the proceedings before the hearing officer, the commissioner may order that the additional evidence be taken before the same hearing officer who rendered the initial decision upon

conditions determined by the commissioner. The hearing officer may modify the initial decision by reason of the additional evidence and shall file that evidence and any modifications, new findings, or decision with the commissioner. Unless leave is given by the commissioner in accordance with the provisions of this subsection, the appeal panel may not consider new evidence under any circumstances. In all circumstances, the commissioner's decision shall be based upon considerations as set forth in Code Section 31-6-42 and the department's rules.

(l) If, based upon the findings of fact by the hearing officer, the commissioner determines that the appeal filed by any party of a decision of the department lacks substantial justification and was undertaken primarily for the purpose of delay or harassment, the commissioner may enter an award in his or her written order against such party and in favor of the successful party or parties, including the department, of all or any part of their respective reasonable and necessary attorney's fees and expenses of litigation, as the commissioner deems just. Such award may be enforced by any court undertaking judicial review of the final decision. In the absence of any petition for judicial review, then such award shall be enforced, upon due application, by any court having personal jurisdiction over the party against whom such an award is made.

(m) Unless the hearing officer's decision becomes the department's final decision by operation of law as provided in subsection (j) of this Code section, the decision of the commissioner shall become the department's final decision by operation of law. Such final decision shall be the final department decision for purposes of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." The appeals process provided by this Code section shall be the administrative remedy only for decisions made by the department pursuant to Code Section 31-6-43 which involve the approval or denial of applications for certificates of need.

(n) A party responding to an appeal to the commissioner may be entitled to reasonable attorney's fees and costs of such appeal if it is determined that the appeal lacked substantial justification and was undertaken primarily for the purpose of delay or harassment; provided, however, that the department shall not be required to pay attorney's fees or costs. This subsection shall not apply to the portion of attorney's fees accrued on behalf of a party responding to or bringing a challenge to the department's authority to enact a rule or regulation or the department's jurisdiction or another challenge that could not have been decided in the administrative proceeding, nor shall it apply to costs accrued when the only argument raised by the appealing party is one described in this subsection. (Code 1981, § 31-6-44, enacted by Ga. L.

1983, p. 1566, § 1; Ga. L. 1986, p. 744, § 1; Ga. L. 1990, p. 1469, § 1; Ga. L. 1990, p. 1903, § 8; Ga. L. 1994, p. 684, § 3; Ga. L. 1999, p. 296, § 22; Ga. L. 2008, p. 12, § 1-1/SB 433.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2008, a second occurrence of the word “of” was deleted preceding “the date of” in the last sentence of subsection (i).

Editor’s notes. — Ga. L. 2008, p. 12, § 3-1/SB 433, not codified by the General Assembly, provides that the amendment to this Code section shall only apply to applications submitted on or after July 1, 2008.

Administrative rules and regulations. — Administration, Official Compilation of the Rules and Regulations of the State of Georgia, Health Planning Review Board, Chapter 274-1.

Law reviews. — For annual survey of administrative law, see 38 Mercer L. Rev. 17 (1986). For annual survey of administrative law, see 56 Mercer L. Rev. 31 (2004).

JUDICIAL DECISIONS

Residents who oppose plans to build a new hospital do not have standing to appeal to the Health Planning Review Board (now Certificate of Need Appeal Panel) a decision by the State Health Planning and Development Agency (now Department of Community Health) for a certificate of need approving construction of the new hospital. *Loyd v. Georgia State Health Planning & Dev. Agency*, 168 Ga. App. 850, 310 S.E.2d 738 (1983).

Criteria used by Review Board. — Review Board (now Certificate of Need Appeal Panel) could use not only the considerations listed in O.C.G.A. § 31-6-42, but also Health Planning Agency (now Department of Community Health) standards and criteria interpreting those standards to make a decision in the case before the board. *North Fulton Community Hosp. v. State Health Planning & Dev. Agency*, 168 Ga. App. 801, 310 S.E.2d 764 (1983).

Ex parte contacts between the assistant attorney general representing the state’s interest and the chair of the Review Board (now Certificate of Need Appeal Panel) were not prejudicial to the fair conduct of the hearing when the contacts did not affect an issue of standing, the legal effect of a legislative resolution, and the manner in which votes were taken, nor did the contacts affect the full consideration of each party’s interest before the Review Board. *North Fulton Community*

Hosp. v. State Health Planning & Dev. Agency, 168 Ga. App. 801, 310 S.E.2d 764 (1983).

Ex parte contacts between the assistant attorney general and the chair of the Review Board (now Certificate of Need Appeal Panel) regarding findings of facts and conclusions of law two weeks after the decision of the Review Board had been reached were not prejudicial when the contacts were for the sole purpose of drafting an opinion to support the decision already reached and announced. *North Fulton Community Hosp. v. State Health Planning & Dev. Agency*, 168 Ga. App. 801, 310 S.E.2d 764 (1983).

Agency proper party respondent to petition seeking review of board’s decision. — Health Planning Review Board (now Certificate of Need Appeal Panel) is a solely adjudicatory, quasi-judicial body, and is an inappropriate party to an appeal of the board’s rulings in court. A decision by the Health Planning Review Board is a final administrative decision for purposes of judicial appeal, and the Health Planning Agency, not the Review Board, is the proper party respondent to a petition seeking judicial review of the board’s determination. *Loyd v. Georgia State Health Planning & Dev. Agency*, 168 Ga. App. 850, 310 S.E.2d 738 (1983).

Powers of administrative review. — Review board, in reversing a decision of the Health Planning Agency (now Department of Community Health) which had

denied a certificate of need for construction of a nursing home in Alpharetta County, acted beyond the board's powers of administrative review of contested cases by deeming the "County Deficit Rule" of the planning agency inapplicable in a controversy to which the rule applied by the rule's express terms, or by applying the rule to part of the county instead of to the entire county. *Dogwood Square Nursing Ctr., Inc. v. State Health Planning Agency*, 255 Ga. 694, 341 S.E.2d 432 (1986).

Review Board's reliance upon the principles of res judicata to deny an application for a certificate of need was authorized since the original application had been denied on the basis of the "County Deficit Rule" and the applicant did not introduce evidence upon reapplication which was sufficient to show that the applicant's proposed facility would comport with the same rule. *State Health Planning Agency v. Cribb Indus., Inc.*, 204 Ga. App. 285, 419 S.E.2d 123 (1992).

Evidence sustaining denial of applications. — Determination by the State Health Planning Agency (now Department of Community Health) that the establishment of open heart surgery service at two applying hospitals would adversely impact existing service was supported by evidence that open heart service at another hospital would be reduced to less than 350 procedures annually and by more than ten percent of the total annual volume. *Hospital Auth. v. State Health Planning Agency*, 211 Ga. App. 407, 438 S.E.2d 912 (1993).

Given the ability of an area's patients to secure adult open-heart surgery service at a significant rate, the Georgia Health Planning Review Board (now Certificate of Need Appeal Panel) did not exceed the board's authority, abuse the board's discretion, act arbitrarily or without substantial evidence, or otherwise err by rejecting the hearing officer's determination that a certificate of need (CON) should be issued to the area's medical center under a geographical barrier exception to the Georgia Department of Community Health's CON regulations. The Board determined that neither the use of

out-of-state services, nor the reluctance of the area's physicians to refer patients to in-state facilities, created a geographical barrier warranting an exception. *Ga. Dep't of Cmty. Health v. Satilla Health Servs.*, 266 Ga. App. 880, 598 S.E.2d 514 (2004).

Error in reversing grant of certificate of need. — Trial court erred in reversing the grant of a certificate of need on the ground that the applicant was attempting to circumvent a cease-and-desist order issued to a corporation owned by the same individual as the applicant; by seeking the certificate of need, the applicant was not doing anything that the law did not allow, the Department of Community Health held an extensive evidentiary hearing before granting the application, and the trial court improperly disregarded the corporate forms of the corporation and the applicant based on the fact that they were owned by the same individual. *Global Diagnostic Dev., LLC v. Diagnostic Imaging of Atlanta*, 284 Ga. App. 66, 643 S.E.2d 338 (2007).

Superior court erred in reversing a decision of the Georgia Department of Community Health, which awarded a medical center a certificate of need, because the agency's decision was supported by substantial evidence, and the department's interpretation of the applicable regulations, as requiring only an amendment of the center's application, rather than a new application, was not plainly erroneous. *Northeast Ga. Med. Ctr., Inc. v. Winder HMA, Inc.*, 303 Ga. App. 50, 693 S.E.2d 110 (2010).

Cancellation of certificate of need proper. — Trial court properly affirmed an administrative decision cancelling a nursing home's certificate of need as the nursing home failed to comply with applicable statutory and regulatory requirements with regard to completing the project timely and providing documentation that ongoing construction was being undertaken. Further, several site inspections established that, in fact, no construction was being undertaken for the project. *Southern Crescent Rehab. & Ret. Ctr., Inc. v. Ga. Dep't of Cmty. Health*, 290 Ga. App. 863, 660 S.E.2d 792 (2008), cert. denied, 2008 Ga. LEXIS 679 (2008).

Admission of additional evidence permitted. —

Two hospitals that opposed an application for a certificate of need for perinatal services failed to show any harm resulting from alleged deficiencies in the initial decision issued by a hearing officer of the Department of Community Health which prejudiced the hospitals' ability to present the hospitals' case to the hearing officer. The hospitals could have, but did not, present additional evidence pursuant to O.C.G.A. § 31-6-44. *Palmyra Park Hosp., Inc. v. Phoebe Sumter Med. Ctr.*, 310 Ga. App. 487, 714 S.E.2d 71 (2011).

Error in reversing denial of certificate of need. —

Trial court erred by reversing a decision of the Department of Community Health denying an ambulatory surgery center's application for a certificate of need to develop an orthopedic center in a city as the trial court substituted the court's own judgment for that of

the agency since the Department made a finding that the service area already had a surplus of operating rooms, which were significantly underutilized, and the ambulatory surgery center failed to prove that any specific patient population was in need of the new center or that any barrier to quality care existed. *Surgery Ctr., LLC v. Hughston Surgical Inst., LLC*, 293 Ga. App. 879, 668 S.E.2d 326 (2008).

Cited in *St. Joseph's Hosp. v. Hospital Corp. of Am.*, 795 F.2d 948 (11th Cir. 1986); *American Medical Int'l, Inc. v. Charter Lake Hosp.*, 186 Ga. App. 204, 366 S.E.2d 795 (1988); *HCA Health Servs. of Ga., Inc. v. Roach*, 265 Ga. 501, 458 S.E.2d 118 (1995); *Ga. Dep't of Cmty. Health, Div. of Health Planning v. Gwinnett Hosp. Sys.*, 262 Ga. App. 879, 586 S.E.2d 762 (2003); *Greene v. Dep't of Cmty. Health*, 293 Ga. App. 201, 666 S.E.2d 590 (2008).

OPINIONS OF THE ATTORNEY GENERAL

Administrative review. — Prior to the 1983 reenactment, applicants proposing a capital expenditure, as well as health systems agencies and persons who qualify as a "party" or "persons aggrieved" under the Georgia Administrative Procedure Act, O.C.G.A. Ch. 13, T. 50, have a right to appeal to the State Health Plan-

ning Review Board (now Certificate of Need Appeal Panel) decisions of the State Health Planning and Development Agency (now Department of Community Health) relative to § 1122 of the Social Security Act, 42 U.S.C. § 1320a-1(a). 1981 Op. Att'y Gen. No. 81-8.

31-6-44.1. Judicial review.

(a) Any party to the initial administrative appeal hearing conducted by the appointed appeal panel hearing officer, excluding the department, may seek judicial review of the final decision in accordance with the method set forth in Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," except as otherwise modified by this Code section; provided, however, that in conducting such review, the court may reverse or modify the final decision only if substantial rights of the appellant have been prejudiced because the procedures followed by the department, the hearing officer, or the commissioner or the administrative findings, inferences, and conclusions contained in the final decision are:

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the statutory authority of the department;
- (3) Made upon unlawful procedures;

(4) Affected by other error of law;

(5) Not supported by substantial evidence, which shall mean that the record does not contain such relevant evidence as a reasonable mind might accept as adequate to support such findings, inferences, conclusions, or decisions, which such evidentiary standard shall be in excess of the “any evidence” standard contained in other statutory provisions; or

(6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

(b) In the event a party seeks judicial review, the department shall, within 30 days of the filing of the notice of appeal with the superior court, transmit certified copies of all documents and papers in its file together with a transcript of the testimony taken and its findings of fact and decision to the clerk of the superior court to which the case has been appealed. The case so appealed may then be brought by either party upon ten days’ written notice to the other before the superior court for a hearing upon such record, subject to an assignment of the case for hearing by the court; provided, however, if the court does not hear the case within 120 days of the date of docketing in the superior court, the decision of the department shall be considered affirmed by operation of law unless a hearing originally scheduled to be heard within the 120 days has been continued to a date certain by order of the court. In the event a hearing is held later than 90 days after the date of docketing in the superior court because same has been continued to a date certain by order of the court, the decision of the department shall be considered affirmed by operation of law if no order of the court disposing of the issues on appeal has been entered within 30 days after the date of the continued hearing. If a case is heard within 120 days from the date of docketing in the superior court, the decision of the department shall be considered affirmed by operation of law if no order of the court dispositive of the issues on appeal has been entered within 30 days of the date of the hearing.

(c) A party responding to an appeal to the superior court shall be entitled to reasonable attorney’s fees and costs if such party is the prevailing party of such appeal as decided by final order; provided, however, the department shall not be required to pay attorney’s fees or costs. This subsection shall not apply to the portion of attorney’s fees accrued on behalf of a party responding to or bringing a challenge to the department’s authority to enact a rule or regulation or the department’s jurisdiction or another challenge that could not have been raised in the administrative proceeding. (Code 1981, § 31-6-44.1, enacted by Ga. L. 2008, p. 12, § 1-1/SB 433.)

Editor's notes. — Ga. L. 2008, p. 12, § 3-1/SB 433, not codified by the General Assembly, provides that the enactment of this Code section shall only apply to applications submitted on or after July 1, 2008.

31-6-45. Revocation of certificate of need; enforcement of chapter; regulatory investigations and examinations.

(a) The department may revoke a certificate of need, in whole or in part, after notice to the holder of the certificate and a fair hearing pursuant to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," for the following reasons:

- (1) Failure to comply with the provisions of Code Section 31-6-41;
- (2) The intentional provision of false information to the department by an applicant in that applicant's application;
- (3) Repeated failure to pay any fines or moneys due to the department;
- (4) Failure to maintain minimum quality of care standards that may be established by the department;
- (5) Failure to participate as a provider of medical assistance for Medicaid purposes pursuant to Code Section 31-6-45.2 or any other applicable Code section;
- (6) The failure to submit a timely or complete report within 180 days following the date the report is due pursuant to Code Section 31-6-70; or
- (7) Failure of a destination cancer hospital to meet an annual patient base composed of a minimum of 65 percent of patients who reside outside this state for three calendar years in any five-year period.

The department may not, however, revoke a certificate of need if the applicant changes the defined location of the project within the same county less than three miles from the location specified in the certificate of need for financial reasons or other reasons beyond its control, including, but not limited to, failure to obtain any required approval from zoning or other governmental agencies or entities, provided such change in location is otherwise consistent with the considerations and rules applied in the evaluation of the project.

(a.1) The department may revoke a certificate of need, in whole or in part, after notice to the holder of the certificate and a fair hearing pursuant to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," if the services or units of services for which the certificate of need was issued are not implemented in a timely manner,

as established by the department in its rules. This subsection shall apply only to certificates of need issued on or after July 1, 2008.

(b) Any health care facility offering a new institutional health service without having obtained a certificate of need and which has not been previously licensed as a health care facility shall be denied a license to operate.

(c) In the event that a new institutional health service is knowingly offered or developed without having obtained a certificate of need as required by this chapter, or the certificate of need for such service is revoked according to the provisions of this Code section, a facility or applicant may be fined an amount of \$5,000.00 per day up to 30 days, \$10,000.00 per day from 31 days through 60 days, and \$25,000.00 per day after 60 days for each day that the violation of this chapter has existed and knowingly and willingly continues; provided, however, that the expenditure or commitment of or incurring an obligation for the expenditure of funds to take or perform actions not subject to this chapter or to acquire, develop, or prepare a health care facility site for which a certificate of need application is denied shall not be a violation of this chapter and shall not be subject to such a fine. The commissioner shall determine, after notice and a hearing, whether the fines provided in this Code section shall be levied.

(d) In addition, for purposes of this Code section, the State of Georgia, acting by and through the department, or any other interested person, shall have standing in any court of competent jurisdiction to maintain an action for injunctive relief to enforce the provisions of this chapter.

(e) The department shall have the authority to make public or private investigations or examinations inside or outside of this state to determine whether all provisions of this Code section or any other law, rule, regulation, or formal order relating to the provisions of Code Section 31-6-40 has been violated. Such investigations may be initiated at any time in the discretion of the department and may continue during the pendency of any action initiated by the department pursuant to subsection (a) of this Code section. For the purpose of conducting any investigation or inspection pursuant to this subsection, the department shall have the authority, upon providing reasonable notice, to require the production of any books, records, papers, or other information related to any certificate of need issue. (Code 1981, § 31-6-45, enacted by Ga. L. 1983, p. 1566, § 1; Ga. L. 1991, p. 1871, § 7; Ga. L. 1999, p. 296, § 22; Ga. L. 2008, p. 12, § 1-1/SB 433; Ga. L. 2009, p. 8, § 31/SB 46.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1985, a comma was deleted following “denied” near the end of the first sentence of subsection (c).

Pursuant to Code Section 28-9-5, in 1999, “commissioner” was substituted for “executive director” in subsection (c).

Editor’s notes. — Ga. L. 2008, p. 12, § 3-1/SB 433, not codified by the General

Assembly, provides that the amendment to this Code section shall only apply to applications submitted on or after July 1, 2008.

JUDICIAL DECISIONS

Enforcement. — Prior to the 1983 re-enactment, the health planning agency was authorized to bring an action to enforce provisions of O.C.G.A. Ch. 6, T. 31, but a competitor of a health service provider was not. *Executive Comm. v. Metro Ambulance Servs., Inc.*, 250 Ga. 61, 296 S.E.2d 547 (1982).

Competing health care provider is not entitled to bring an enforcement action for injunctive relief against another provider of health care services violating the Certificate of Need Program. *Diversified Health Mgt. Servs., Inc. v. Visiting Nurses Ass’n*, 254 Ga. 500, 330 S.E.2d 885 (1985).

Competing health care provider has standing to bring a mandamus action to compel the State Health Planning and Development Agency (now Department of Community Health) to institute proceedings against another provider of health care services who is violating the statutory law governing certificates of need.

Diversified Health Mgt. Servs., Inc. v. Visiting Nurses Ass’n, 254 Ga. 500, 330 S.E.2d 885 (1985).

Cancellation of certificate of need proper. — Trial court properly affirmed an administrative decision cancelling a nursing home’s certificate of need as the nursing home failed to comply with applicable statutory and regulatory requirements with regard to completing the project timely and providing documentation that ongoing construction was being undertaken. Further, several site inspections established that, in fact, no construction was being undertaken for the project. *Southern Crescent Rehab. & Ret. Ctr., Inc. v. Ga. Dep’t of Cmty. Health*, 290 Ga. App. 863, 660 S.E.2d 792 (2008), cert. denied, 2008 Ga. LEXIS 679 (2008).

Cited in *HCA Health Servs. of Ga., Inc. v. Roach*, 265 Ga. 501, 458 S.E.2d 118 (1995).

31-6-45.1. Automatic revocation of certificate of need or authority.

(a) A health care facility which has a certificate of need or is otherwise authorized to operate pursuant to this chapter shall have such certificate of need or authority to operate automatically revoked by operation of law without any action by the department when that facility’s permit to operate pursuant to Code Section 31-7-4 is finally revoked by order of the department. For purposes of this subsection, the date of such final revocation shall be as follows:

(1) When there is no appeal of the order pursuant to Chapter 5 of this title, the one hundred and eightieth day after the date upon which expires the time for appealing the revocation order without such an appeal being filed; or

(2) When there is an appeal of the order pursuant to Chapter 5 of this title, the date upon which expires the time to appeal the last administrative or judicial order affirming or approving the revocation or revocation order without such appeal being filed.

(b) The services which had been authorized to be offered by a health care facility for which a certificate of need has been revoked pursuant to subsection (a) of this Code section may continue to be offered in the service area in which that facility was located under such conditions as specified by the department notwithstanding that some or all of such services could not otherwise be offered as new institutional health services. (Code 1981, § 31-6-45.1, enacted by Ga. L. 1990, p. 860, § 1; Ga. L. 1991, p. 328, § 1; Ga. L. 1999, p. 296, § 22; Ga. L. 2000, p. 136, § 31; Ga. L. 2001, p. 4, § 31; Ga. L. 2008, p. 12, § 1-1/SB 433.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1996, “this title” was substituted for “Title 31” in paragraphs (a)(1) and (a)(2).

Editor’s notes. — Ga. L. 2008, p. 12,

§ 3-1/SB 433, not codified by the General Assembly, provides that the amendment to this Code section shall only apply to applications submitted on or after July 1, 2008.

31-6-45.2. Participation as Medicaid provider requirement; termination by health care facility of participation as provider of medical assistance; monetary penalty.

(a) The department may require that any applicant for a certificate of need agree to participate as a provider of medical assistance for Medicaid purposes pursuant to Article 7 of Chapter 4 of Title 49.

(b) Any proposed or existing health care facility which obtains a certificate of need on or after April 6, 1992, based in part upon assurances that it will participate as a provider of medical assistance, as defined in paragraph (6) of Code Section 49-4-141, and which terminates its participation as a provider of medical assistance or violates any conditions imposed by the department relating to such participation, shall be subject to a monetary penalty in the amount of the difference between the Medicaid covered services which the facility agreed to provide in its certificate of need application and the amount actually provided and may be subject to revocation of its certificate of need by the department pursuant to Code Section 31-6-45; provided, however, that this Code section shall not apply if:

(1) The proposed or existing health care facility’s certificate of need application was approved by the Health Planning Agency prior to April 6, 1992, and the Health Planning Agency’s approval of such application was under appeal on or after April 6, 1992, and the Health Planning Agency’s approval of such application is ultimately affirmed;

(2) Such facility’s participation as a provider of medical assistance is terminated by the state or federal government; or

(3) Such facility establishes good cause for terminating its participation as a provider of medical assistance. For purposes of this Code section, “good cause” shall mean:

(A) Changes in the adequacy of medical assistance payments, as defined in paragraph (5) of Code Section 49-4-141, provided that at least 10 percent of the facility's utilization during the preceding 12 month period was attributable to services to recipients of medical assistance, as defined in paragraph (7) of Code Section 49-4-141. Medical assistance payments to a facility shall be presumed adequate unless the revenues received by the facility from all sources are less than the total costs set forth in the cost report for the preceding full 12 month period filed by such facility pursuant to the state plan as defined in paragraph (8) of Code Section 49-4-141 which are allowed under the state plan for purposes of determining such facility's reimbursement rate for medical assistance and the aggregate amount of such facility's medical assistance payments (including any amounts received by the facility from recipients of medical assistance) during the preceding full 12 month cost reporting period is less than 85 percent of such facility's Medicaid costs for such period. Medicaid costs shall be determined by multiplying the allowable costs set forth in the cost report, less any audit adjustments, by the percentage of the facility's utilization during the cost reporting period which was attributable to recipients of medical assistance;

(B) Changes in the overall ability of the facility to cover its costs if such changes are of such a degree as to seriously threaten the continued viability of the facility; or

(C) Changes in the state plan, statutes, or rules and regulations governing providers of medical assistance which impose substantial new obligations upon the facility which are not reimbursed by Medicaid and which adversely affect the financial viability of the facility in a substantial manner.

(c) A facility seeking to terminate its enrollment as a provider of medical assistance shall submit a written request to the department documenting good cause for termination. The department shall grant or deny the facility's request within 30 days. If the department denies the facility's request, the facility shall be entitled to a hearing conducted in the same manner as an evidentiary hearing conducted by the department pursuant to the provisions of Code Section 49-4-153 within 30 days of the department's decision.

(d) The imposition of the monetary penalty provided in this Code section shall commence upon the date that said facility has terminated its participation as a provider of medical assistance, as determined by the commissioner. The monetary penalty shall be levied and collected by the department on an annual basis for every year in which the facility fails to participate as a provider of medical assistance. Penalties authorized under this Code section shall be subject to the same notices

and hearings as provided for levy of fines under Code Section 31-6-45. (Code 1981, § 31-6-45.2, enacted by Ga. L. 1992, p. 1068, § 2; Ga. L. 1999, p. 296, §§ 22, 24; Ga. L. 2008, p. 12, § 1-1/SB 433.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1992, “April 6, 1992” was substituted for “the effective date of this Code section” in the introductory language of subsection (a) (now subsection (b)) and in paragraph (a)(1) (now subsection (b)(1)), and “government” was substituted for “governments” in paragraph (a)(2) (now subsection (b)(2)).

Pursuant to Code Section 28-9-5, in 1999, “Health Planning Agency” was substituted for “department” and “Health Planning Agency’s” was substituted for “department’s” in paragraph (a)(1) (now

paragraph (b)(1)) and “commissioner” was substituted for “executive director” in the first sentence of subsection (c) (now subsection (d)).

Editor’s notes. — Ga. L. 2008, p. 12, § 3-1/SB 433, not codified by the General Assembly, provides that the amendment to this Code section shall only apply to applications submitted on or after July 1, 2008.

Law reviews. — For note on 1992 enactment of this Code section, see 9 Ga. St. U.L. Rev. 265 (1992).

31-6-46. Annual report by department.

The department shall prepare and submit an annual report to the board and to the Health and Human Services Committee of the Senate and the Health and Human Services Committee of the House of Representatives about its operations and decisions for the preceding 12 month period, not later than 30 days prior to each convening of the General Assembly in regular session. Either committee may request any additional reports or information, including decisions, from the department at any time, including a period in which the General Assembly is not in regular session. The annual report shall include information and updates relating to the state health plan and the certificate of need program and an annual analysis of proactive and prospective approaches to need methodologies and access to health care services. The annual report shall include information for Georgia’s congressional delegation which highlights issues regarding federal laws and regulations influencing Medicaid and medicare, insurance and related tax laws, and long-term health care. (Code 1981, § 31-6-46, enacted by Ga. L. 1983, p. 1566, § 1; Ga. L. 1992, p. 6, § 31; Ga. L. 1999, p. 296, § 22; Ga. L. 2005, p. 48, § 2/HB 309; Ga. L. 2008, p. 12, § 1-1/SB 433.)

Editor’s notes. — Ga. L. 2008, p. 12, § 3-1/SB 433, not codified by the General Assembly, provides that the amendment

to this Code section shall only apply to applications submitted on or after July 1, 2008.

31-6-47. Exemptions from chapter.

(a) Notwithstanding the other provisions of this chapter, this chapter shall not apply to:

(1) Infirmaries operated by educational institutions for the sole and exclusive benefit of students, faculty members, officers, or employees thereof;

(2) Infirmaries or facilities operated by businesses for the sole and exclusive benefit of officers or employees thereof, provided that such infirmaries or facilities make no provision for overnight stay by persons receiving their services;

(3) Institutions operated exclusively by the federal government or by any of its agencies;

(4) Offices of private physicians or dentists whether for individual or group practice, except as otherwise provided in paragraph (3) or (7) of subsection (a) of Code Section 31-6-40;

(5) Religious, nonmedical health care institutions as defined in 42 U.S.C. § 1395x(ss)(1), listed and certified by a national accrediting organization;

(6) Site acquisitions for health care facilities or preparation or development costs for such sites prior to the decision to file a certificate of need application;

(7) Expenditures related to adequate preparation and development of an application for a certificate of need;

(8) The commitment of funds conditioned upon the obtaining of a certificate of need;

(9) Expenditures for the acquisition of existing health care facilities by stock or asset purchase, merger, consolidation, or other lawful means unless the facilities are owned or operated by or on behalf of a:

(A) Political subdivision of this state;

(B) Combination of such political subdivisions; or

(C) Hospital authority, as defined in Article 4 of Chapter 7 of this title;

(9.1) Expenditures for the restructuring of or for the acquisition by stock or asset purchase, merger, consolidation, or other lawful means of an existing health care facility which is owned or operated by or on behalf of any entity described in subparagraph (A), (B), or (C) of paragraph (9) of this subsection only if such restructuring or acquisition is made by any entity described in subparagraph (A), (B), or (C) of paragraph (9) of this subsection;

(10) Expenditures of less than \$870,000.00 for any minor or major repair or replacement of equipment by a health care facility that is not owned by a group practice of physicians or a hospital and that

provides diagnostic imaging services if such facility received a letter of nonreviewability from the department prior to July 1, 2008. This paragraph shall not apply to such facilities in rural counties;

(10.1) Except as provided in paragraph (10) of this subsection, expenditures for the minor or major repair of a health care facility or a facility that is exempt from the requirements of this chapter, parts thereof or services provided or equipment used therein; or the replacement of equipment, including but not limited to CT scanners previously approved for a certificate of need;

(11) Capital expenditures otherwise covered by this chapter required solely to eliminate or prevent safety hazards as defined by federal, state, or local fire, building, environmental, occupational health, or life safety codes or regulations, to comply with licensing requirements of the department, or to comply with accreditation standards of a nationally recognized health care accreditation body;

(12) Cost overruns whose percentage of the cost of a project is equal to or less than the cumulative annual rate of increase in the composite construction index, published by the Bureau of the Census of the Department of Commerce, of the United States government, calculated from the date of approval of the project;

(13) Transfers from one health care facility to another such facility of major medical equipment previously approved under or exempted from certificate of need review, except where such transfer results in the institution of a new clinical health service for which a certificate of need is required in the facility acquiring said equipment, provided that such transfers are recorded at net book value of the medical equipment as recorded on the books of the transferring facility;

(14) New institutional health services provided by or on behalf of health maintenance organizations or related health care facilities in circumstances defined by the department pursuant to federal law;

(15) Increases in the bed capacity of a hospital up to ten beds or 10 percent of capacity, whichever is greater, in any consecutive two-year period, in a hospital that has maintained an overall occupancy rate greater than 75 percent for the previous 12 month period;

(16) Expenditures for nonclinical projects, including parking lots, parking decks, and other parking facilities; computer systems, software, and other information technology; medical office buildings; and state mental health facilities;

(17) Continuing care retirement communities, provided that the skilled nursing component of the facility is for the exclusive use of residents of the continuing care retirement community and that a written exemption is obtained from the department; provided, how-

ever, that new sheltered nursing home beds may be used on a limited basis by persons who are not residents of the continuing care retirement community for a period up to five years after the date of issuance of the initial nursing home license, but such beds shall not be eligible for Medicaid reimbursement. For the first year, the continuing care retirement community sheltered nursing facility may utilize not more than 50 percent of its licensed beds for patients who are not residents of the continuing care retirement community. In the second year of operation, the continuing care retirement community shall allow not more than 40 percent of its licensed beds for new patients who are not residents of the continuing care retirement community. In the third year of operation, the continuing care retirement community shall allow not more than 30 percent of its licensed beds for new patients who are not residents of the continuing care retirement community. In the fourth year of operation, the continuing care retirement community shall allow not more than 20 percent of its licensed beds for new patients who are not residents of the continuing care retirement community. In the fifth year of operation, the continuing care retirement community shall allow not more than 10 percent of its licensed beds for new patients who are not residents of the continuing care retirement community. At no time during the first five years shall the continuing care retirement community sheltered nursing facility occupy more than 50 percent of its licensed beds with patients who are not residents under contract with the continuing care retirement community. At the end of the five-year period, the continuing care retirement community sheltered nursing facility shall be utilized exclusively by residents of the continuing care retirement community, and at no time shall a resident of a continuing care retirement community be denied access to the sheltered nursing facility. At no time shall any existing patient be forced to leave the continuing care retirement community to comply with this paragraph. The department is authorized to promulgate rules and regulations regarding the use and definition of "sheltered nursing facility" in a manner consistent with this Code section. Agreements to provide continuing care include agreements to provide care for any duration, including agreements that are terminable by either party;

(18) Any single specialty ambulatory surgical center that:

(A)(i) Has capital expenditures associated with the construction, development, or other establishment of the clinical health service which do not exceed \$2.5 million; or

(ii) Is the only single specialty ambulatory surgical center in the county owned by the group practice and has two or fewer operating rooms; provided, however, that a center exempt pur-

suant to this division shall be required to obtain a certificate of need in order to add any additional operating rooms;

(B) Has a hospital affiliation agreement with a hospital within a reasonable distance from the facility or the medical staff at the center has admitting privileges or other acceptable documented arrangements with such hospital to ensure the necessary backup for the center for medical complications. The center shall have the capability to transfer a patient immediately to a hospital within a reasonable distance from the facility with adequate emergency room services. Hospitals shall not unreasonably deny a transfer agreement or affiliation agreement to the center;

(C)(i) Provides care to Medicaid beneficiaries and, if the facility provides medical care and treatment to children, to PeachCare for Kids beneficiaries and provides uncompensated indigent and charity care in an amount equal to or greater than 2 percent of its adjusted gross revenue; or

(ii) If the center is not a participant in Medicaid or the PeachCare for Kids Program, provides uncompensated care to Medicaid beneficiaries and, if the facility provides medical care and treatment to children, to PeachCare for Kids beneficiaries, uncompensated indigent and charity care, or both in an amount equal to or greater than 4 percent of its adjusted gross revenue;

provided, however, single specialty ambulatory surgical centers owned by physicians in the practice of ophthalmology shall not be required to comply with this subparagraph; and

(D) Provides annual reports in the same manner and in accordance with Code Section 31-6-70.

Noncompliance with any condition of this paragraph shall result in a monetary penalty in the amount of the difference between the services which the center is required to provide and the amount actually provided and may be subject to revocation of its exemption status by the department for repeated failure to pay any fines or moneys due to the department or for repeated failure to produce data as required by Code Section 31-6-70 after notice to the exemption holder and a fair hearing pursuant to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." The dollar amount specified in this paragraph shall be adjusted annually by an amount calculated by multiplying such dollar amount (as adjusted for the preceding year) by the annual percentage of change in the composite index of construction material prices, or its successor or appropriate replacement index, if any, published by the United States Department of Commerce for the preceding calendar year, commencing on July 1, 2009, and on each anniversary thereafter of publication of the index.

The department shall immediately institute rule-making procedures to adopt such adjusted dollar amounts. In calculating the dollar amounts of a proposed project for purposes of this paragraph, the costs of all items subject to review by this chapter and items not subject to review by this chapter associated with and simultaneously developed or proposed with the project shall be counted, except for the expenditure or commitment of or incurring an obligation for the expenditure of funds to develop certificate of need applications, studies, reports, schematics, preliminary plans and specifications or working drawings, or to acquire sites;

(19) Any joint venture ambulatory surgical center that:

(A) Has capital expenditures associated with the construction, development, or other establishment of the clinical health service which do not exceed \$5 million;

(B)(i) Provides care to Medicaid beneficiaries and, if the facility provides medical care and treatment to children, to PeachCare for Kids beneficiaries and provides uncompensated indigent and charity care in an amount equal to or greater than 2 percent of its adjusted gross revenue; or

(ii) If the center is not a participant in Medicaid or the PeachCare for Kids Program, provides uncompensated care to Medicaid beneficiaries and, if the facility provides medical care and treatment to children, to PeachCare for Kids beneficiaries, uncompensated indigent and charity care, or both in an amount equal to or greater than 4 percent of its adjusted gross revenue; and

(C) Provides annual reports in the same manner and in accordance with Code Section 31-6-70.

Noncompliance with any condition of this paragraph shall result in a monetary penalty in the amount of the difference between the services which the center is required to provide and the amount actually provided and may be subject to revocation of its exemption status by the department for repeated failure to pay any fines or moneys due to the department or for repeated failure to produce data as required by Code Section 31-6-70 after notice to the exemption holder and a fair hearing pursuant to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." The dollar amount specified in this paragraph shall be adjusted annually by an amount calculated by multiplying such dollar amount (as adjusted for the preceding year) by the annual percentage of change in the composite index of construction material prices, or its successor or appropriate replacement index, if any, published by the United States Department of Commerce for the preceding calendar year, commencing on July 1,

2009, and on each anniversary thereafter of publication of the index. The department shall immediately institute rule-making procedures to adopt such adjusted dollar amounts. In calculating the dollar amounts of a proposed project for purposes of this paragraph, the costs of all items subject to review by this chapter and items not subject to review by this chapter associated with and simultaneously developed or proposed with the project shall be counted, except for the expenditure or commitment of or incurring an obligation for the expenditure of funds to develop certificate of need applications, studies, reports, schematics, preliminary plans and specifications or working drawings, or to acquire sites;

(20) Expansion of services by an imaging center based on a population needs methodology taking into consideration whether the population residing in the area served by the imaging center has a need for expanded services, as determined by the department in accordance with its rules and regulations, if such imaging center:

(A) Was in existence and operational in this state on January 1, 2008;

(B) Is owned by a hospital or by a physician or a group of physicians comprising at least 80 percent ownership who are currently board certified in radiology;

(C) Provides three or more diagnostic and other imaging services;

(D) Accepts all patients regardless of ability to pay; and

(E) Provides uncompensated indigent and charity care in an amount equal to or greater than the amount of such care provided by the geographically closest general acute care hospital; provided, however, this paragraph shall not apply to an imaging center in a rural county;

(21) Diagnostic cardiac catheterization in a hospital setting on patients 15 years of age and older;

(22) Therapeutic cardiac catheterization in hospitals selected by the department prior to July 1, 2008, to participate in the Atlantic Cardiovascular Patient Outcomes Research Team (C-PORT) Study and therapeutic cardiac catheterization in hospitals that, as determined by the department on an annual basis, meet the criteria to participate in the C-PORT Study but have not been selected for participation; provided, however, that if the criteria requires a transfer agreement to another hospital, no hospital shall unreasonably deny a transfer agreement to another hospital;

(23) Infirmaries or facilities operated by, on behalf of, or under contract with the Department of Corrections or the Department of

Juvenile Justice for the sole and exclusive purpose of providing health care services in a secure environment to prisoners within a penal institution, penitentiary, prison, detention center, or other secure correctional institution, including correctional institutions operated by private entities in this state which house inmates under the Department of Corrections or the Department of Juvenile Justice;

(24) The relocation of any skilled nursing facility or intermediate care facility within the same county, any other health care facility in a rural county within the same county, and any other health care facility in an urban county within a three-mile radius of the existing facility so long as the facility does not propose to offer any new or expanded clinical health services at the new location;

(25) Facilities which are devoted to the provision of treatment and rehabilitative care for periods continuing for 24 hours or longer for persons who have traumatic brain injury, as defined in Code Section 37-3-1; and

(26) Capital expenditures for a project otherwise requiring a certificate of need if those expenditures are for a project to remodel, renovate, replace, or any combination thereof, a medical-surgical hospital and:

(A) That hospital:

- (i) Has a bed capacity of not more than 50 beds;
- (ii) Is located in a county in which no other medical-surgical hospital is located;
- (iii) Has at any time been designated as a disproportionate share hospital by the department; and
- (iv) Has at least 45 percent of its patient revenues derived from medicare, Medicaid, or any combination thereof, for the immediately preceding three years; and

(B) That project:

- (i) Does not result in any of the following:
 - (I) The offering of any new clinical health services;
 - (II) Any increase in bed capacity;
 - (III) Any redistribution of existing beds among existing clinical health services; or
 - (IV) Any increase in capacity of existing clinical health services;
- (ii) Has at least 80 percent of its capital expenditures financed by the proceeds of a special purpose county sales and use tax imposed pursuant to Article 3 of Chapter 8 of Title 48; and

(iii) Is located within a three-mile radius of and within the same county as the hospital's existing facility.

(b) By rule, the department shall establish a procedure for expediting or waiving reviews of certain projects the nonreview of which it deems compatible with the purposes of this chapter, in addition to expenditures exempted from review by this Code section. (Code 1981, § 31-6-47, enacted by Ga. L. 1983, p. 1566, § 1; Ga. L. 1984, p. 22, § 31; Ga. L. 1989, p. 393, § 1; Ga. L. 1991, p. 1419, § 2; Ga. L. 1991, p. 1871, § 8; Ga. L. 1999, p. 296, §§ 22, 24; Ga. L. 2008, p. 9, § 2/HB 967; Ga. L. 2008, p. 12, § 1-1/SB 433; Ga. L. 2009, p. 8, § 31/SB 46; Ga. L. 2009, p. 453, § 1-24/HB 228; Ga. L. 2012, p. 337, § 1/SB 361.)

The 2012 amendment, effective July 1, 2012, substituted "a nationally recognized health care accreditation body" for "the Joint Commission on Accreditation of Hospitals" at the end of paragraph (a)(11).

Code Commission notes. — The amendment of this Code section by Ga. L. 2008, p. 9, § 2, irreconcilably conflicted with and was treated as superseded by

Ga. L. 2008, p. 12, § 1-1. See *County of Butts v. Strahan*, 151 Ga. 417 (1921).

Editor's notes. — Ga. L. 2008, p. 12, § 3-1/SB 433, not codified by the General Assembly, provides that the amendment to this Code section by that Act shall only apply to applications submitted on or after July 1, 2008.

JUDICIAL DECISIONS

Rule-making authority of planning agency. — Relocation rule of the planning agency that purported to exempt certain relocations from compliance with statutory certificate of need requirements, thereby denying opposing parties the opportunity to obtain review by the review board and the courts, was invalid as an unconstitutional attempt to exercise legislative power. *HCA Health Servs. of Ga., Inc. v. Roach*, 265 Ga. 501, 458 S.E.2d 118 (1995).

Mobile cardiac catheterization unit which was "grandfathered" and exempt from obtaining a certificate of need when the unit began operating was required to obtain a certificate of need when the unit was relocated. *Phoebe Putney Mem. Hosp. v. Roach*, 267 Ga. 619, 480 S.E.2d 595 (1997).

Replacement equipment. — Healthcare provider did not show that the Department of Community Health committed an error of law in ordering the healthcare provider to cease operations until the healthcare provider obtained a certificate of need; the healthcare provider was not using replacement equipment at

the time it moved and, thus, whether the Department of Community Health earlier issued a correct letter of nonreviewability was not at issue at the time the healthcare provider relocated to a new center with new equipment. *N. Atlanta Scan Assocs. v. Dep't of Cmty. Health*, 277 Ga. App. 583, 627 S.E.2d 67 (2006).

Exhaustion of administrative remedies. — Court of appeals erred in ruling that a society of surgery centers did not have to exhaust administrative remedies under the Georgia Administrative Procedure Act, O.C.G.A. § 50-13-19(a), in the society's action seeking to prevent the Georgia Department of Community Health and the Department's Commissioner from requiring the Department's members to respond to certain disputed requests in an annual survey because the futility exception to the exhaustion requirement was inapplicable; the Commissioner's position in the lawsuit did not establish futility because actions taken to defend a lawsuit could not establish futility. *Ga. Dep't of Cmty. Health v. Ga. Soc'y of Ambulatory Surgery Ctrs.*, 290 Ga. 628, No. S11G1201, 2012 Ga. LEXIS 206 (2012).

Court of appeals erred in ruling that a society of surgery centers did not have to exhaust administrative remedies under the Georgia Administrative Procedure Act, O.C.G.A. § 50-13-19(a), in the society's action seeking to prevent the Georgia Department of Community Health (DCH) and the Department's Commissioner from requiring the Department's members to respond to certain disputed requests in an annual survey because the "acting outside statutory authority" exception to the exhaustion requirement did not apply; the society did not allege that DCH was acting

wholly outside the Department's jurisdiction under O.C.G.A. § 31-6-70 to conduct surveys, but instead, the society claimed that the manner in which the survey was being conducted did not fully comply with the procedural requirements of the statute. *Ga. Dep't of Cmty. Health v. Ga. Soc'y of Ambulatory Surgery Ctrs.*, 290 Ga. 628, No. S11G1201, 2012 Ga. LEXIS 206 (2012).

Cited in *HCA Health Servs., Inc. v. Roach*, 263 Ga. 798, 439 S.E.2d 494 (1994).

OPINIONS OF THE ATTORNEY GENERAL

Increase of ten beds or 10 percent of bed capacity requires certificate where new service created. — Though an increase of the lesser of ten beds or 10 percent of bed capacity would be excluded from review generally under paragraph (a)(15) of O.C.G.A. § 31-6-47, it is likely that such increases would require a certificate of need if the new beds were used to create new institutional health services. 1983 Op. Att'y Gen. No. 83-34.

State Health Planning and Development Agency rules under former § 31-6-50 given effect under O.C.G.A. § 31-6-47. — To the extent that the exclusions in O.C.G.A. § 31-6-47 are identical to or essentially the same as those in former § 31-6-50, those State Health

Planning and Development Agency (now Department of Community Health) rules in effect on June 30, 1983, as to such exclusions will remain effective on or after July 1, 1983, and until new rules are adopted. 1983 Op. Att'y Gen. No. 83-34.

Any State Health Planning and Development Agency (now Department of Community Health) rules in effect on June 30, 1983, which require a certificate of need for expenditures which increase the bed capacity of a hospital by up to ten beds or 10 percent of capacity, whichever is less, are "inconsistent with this chapter" under O.C.G.A. § 31-6-49 and therefore not controlling after July 1, 1983. 1983 Op. Att'y Gen. No. 83-34.

31-6-47.1. Prior notice and approval of certain activities.

The department shall require prior notice from a new health care facility for approval of any activity which is believed to be exempt pursuant to Code Section 31-6-47 or excluded from the requirements of this chapter under other provisions of this chapter. The department may require prior notice and approval of any activity which is believed to be exempt pursuant to paragraphs (10), (15), (16), (17), (20), (21), (23), (25), and (26) of subsection (a) of Code Section 31-6-47. The department shall be authorized to establish timeframes, forms, and criteria relating to its certification that an activity is properly exempt or excluded under this chapter prior to its implementation. The department shall publish notice of all requests for approval of an exempt activity and opposition to such request. Persons opposing a request for approval of an exempt activity shall be entitled to file an objection with the department and the department shall consider any filed objection when determining whether an activity is exempt. After the depart-

ment's decision, an opposing party shall have the right to a fair hearing pursuant to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," on an adverse decision of the department and judicial review of a final decision in the same manner and under the same provisions as in Code Section 31-6-44.1. (Code 1981, § 31-6-47.1, enacted by Ga. L. 2008, p. 12, § 1-1/SB 433.)

Editor's notes. — Ga. L. 2008, p. 12, § 3-1/SB 433, not codified by the General Assembly, provides that the enactment of this Code section shall only apply to applications submitted on or after July 1, 2008.

31-6-48. Prior entities abolished; transfer of contractual obligations.

The State Health Planning and Development Agency, the State-wide Health Coordinating Council, and the State Health Planning Review Board existing immediately prior to July 1, 1983, are abolished, and their respective successors on and after July 1, 1983, shall be the Health Planning Agency, the Health Policy Council, and the Health Planning Review Board, as established in this chapter, except that on and after July 1, 1991, the Health Strategies Council shall be the successor to the Health Policy Council, and except that on and after July 1, 1999, the Department of Community Health shall be the successor to the Health Planning Agency, and except that on and after July 1, 2008, the Board of Community Health shall be the successor to the duties of the Health Strategies Council with respect to adoption of the state health plan, and except that on June 30, 2008, the Health Planning Review Board is abolished and the terms of all members on such board on such date shall automatically terminate and the Certificate of Need Appeal Panel shall be the successor to the duties of the Health Planning Review Board on such date. For purposes of any existing contract with the federal government, or federal law referring to such abolished agency, council, or board, the successor department, council, or board established in this chapter or in Chapter 2 of this title shall be deemed to be the abolished agency, council, or board and shall succeed to the abolished agency's, council's, or board's functions. The State Health Planning and Development Commission is abolished. (Code 1981, § 31-6-48, enacted by Ga. L. 1983, p. 1566, § 1; Ga. L. 1985, p. 149, § 31; Ga. L. 1991, p. 1880, § 4; Ga. L. 1999, p. 296, § 8; Ga. L. 2000, p. 136, § 31; Ga. L. 2008, p. 12, § 1-1/SB 433; Ga. L. 2009, p. 453, § 1-25/HB 228.)

Editor's notes. — Ga. L. 2008, p. 12, § 3-1/SB 433, not codified by the General Assembly, provides that the amendment to this Code section shall only apply to applications submitted on or after July 1, 2008.

31-6-49. Transitional provisions.

All matters transferred to the Health Planning Agency by the previously existing provisions of this Code section and that are in effect on June 30, 1999, shall automatically be transferred to the Department of Community Health on July 1, 1999. All matters of the Health Planning Review Board that are pending on June 30, 2008, shall automatically be transferred to the Certificate of Need Appeal Panel established pursuant to Code Section 31-6-44. (Code 1981, § 31-6-49, enacted by Ga. L. 1983, p. 1566, § 1; Ga. L. 1985, p. 149, § 31; Ga. L. 1999, p. 296, § 8; Ga. L. 2008, p. 12, § 1-1/SB 433.)

Editor's notes. — Ga. L. 2008, p. 12, § 3-1/SB 433, not codified by the General Assembly, provides that the amendment

to this Code section shall only apply to applications submitted on or after July 1, 2008.

OPINIONS OF THE ATTORNEY GENERAL

Effect to be given to prior rules of State Health Planning and Development Agency. — Any portions of the State Health Planning and Development Agency's (now Department of Community Health) rules in effect on June 30, 1983, which are not "inconsistent with this chapter" under former paragraph (3) of O.C.G.A. § 31-6-49, or which can be adapted to the new law merely by making numerical substitutions, will remain in effect on that date, and will continue in effect until new rules are adopted. 1983 Op. Att'y Gen. No. 83-34.

Those State Health Planning and Development Agency's (now Department of Community Health) rules in effect on June 30, 1983 which refer to the \$150,000 threshold in former § 31-6-2, or do not distinguish between capital expenditures and equipment expenditures as set out in current § 31-6-2(14)(B) and (F) are "inconsistent with this chapter" under former paragraph (3) of O.C.G.A. § 31-6-49, but so as to effectuate the General Assembly's intent will be read together and harmonized with the controlling dollar amounts and classifications of the new law. 1983 Op. Att'y Gen. No. 83-34.

Any provisions in the State Health

Planning and Development Agency's (now Department of Community Health) rules in effect on June 30, 1983 which provide for health system agency participation in the certificate of need review process on or after July 1, 1983 will be "inconsistent with this chapter" under former paragraph (3) of O.C.G.A. § 31-6-49, and as such will not be effective on or after July 1, 1983. 1983 Op. Att'y Gen. No. 83-34.

To the extent that the exclusions in present O.C.G.A. § 31-6-47 are identical to or essentially the same as those in former § 31-6-50, those State Health Planning and Development Agency (now Department of Community Health) rules in effect on June 30, 1983 as to such exclusions will remain effective on or after July 1, 1983 and until new rules are adopted. 1983 Op. Att'y Gen. No. 83-34.

Any State Health Planning and Development Agency (now Department of Community Health) rules in effect on June 30, 1983 which require a certificate of need for expenditures which increase the bed capacity of a hospital by up to ten beds or 10 percent of capacity, whichever is less, is "inconsistent with this chapter" under former paragraph (3) of O.C.G.A. § 31-6-49 and therefore not controlling after July 1, 1983. 1983 Op. Att'y Gen. No. 83-34.

31-6-50. Application of review procedures to expenditures under Section 1122 of the federal Social Security Act.

The review and appeal considerations and procedures set forth in Code Sections 31-6-42 through 31-6-44, respectively, shall apply to and govern the review of capital expenditures under the Section 1122 program of the federal Social Security Act of 1935, as amended, including, but not limited to, any application for approval under Section 1122 which is under consideration by the Health Planning Agency or on appeal before the Certificate of Need Appeal Panel, successor to the former Health Planning Review Board as of June 30, 2008. (Code 1981, § 31-6-50, enacted by Ga. L. 1983, p. 1566, § 1; Ga. L. 1985, p. 149, § 31; Ga. L. 1999, p. 296, § 22; Ga. L. 2008, p. 12, § 1-1/SB 433.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1985, “31-6-42 through 31-6-44” was substituted for “31-6-42, 31-6-43, and 31-6-44”.

Pursuant to Code Section 28-9-5, in 1999, “Health Planning Agency” was substituted for “department.”

Editor’s notes. — Ga. L. 2008, p. 12, § 3-1/SB 433, not codified by the General

Assembly, provides that the amendment to this Code section shall only apply to applications submitted on or after July 1, 2008.

U.S. Code. — Section 1122 of the Social Security Act, as amended, referred to in this Code section, is codified as 42 U.S.C. § 1320a-1.

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Appeal of agency decisions. — Prior to the 1983 reenactment, applicants proposing a capital expenditure, as well as health systems agencies and persons who qualify as a “party” or “persons aggrieved” under the “Georgia Administrative Procedure Act” (O.C.G.A. Ch. 13, T. 50) have the right to appeal to the State Health Plan-

ning Review Board (now Certificate of Need Appeal Panel) decisions of the State Health Planning and Development Agency (now Department of Community Health) relative to § 1122 of the Social Security Act, 42 U.S.C. § 1320a-1(a). 1981 Op. Att’y Gen. No. 81-8.

ARTICLE 4

REPORTS

31-6-70. Reports to the department by certain health care facilities and all ambulatory surgical centers and imaging centers.

(a) There shall be required from each health care facility in this state requiring a certificate of need and all ambulatory surgical centers and imaging centers, whether or not exempt from obtaining a certificate of need under this chapter, an annual report of certain health care information to be submitted to the department. The report shall be due on the last day of January and shall cover the 12 month period preceding each such calendar year.

(b) The report required under subsection (a) of this Code section shall contain the following information:

- (1) Total gross revenues;
- (2) Bad debts;
- (3) Amounts of free care extended, excluding bad debts;
- (4) Contractual adjustments;
- (5) Amounts of care provided under a Hill-Burton commitment;
- (6) Amounts of charity care provided to indigent persons;

(7) Amounts of outside sources of funding from governmental entities, philanthropic groups, or any other source, including the proportion of any such funding dedicated to the care of indigent persons; and

(8) For cases involving indigent persons:

- (A) The number of persons treated;
- (B) The number of inpatients and outpatients;
- (C) Total patient days;
- (D) The number of patients categorized by county of residence; and
- (E) The indigent care costs incurred by the health care facility by county of residence.

(c) As used in subsection (b) of this Code section, "indigent persons" means persons having as a maximum allowable income level an amount corresponding to 125 percent of the federal poverty guideline.

(d) The department shall provide a form for the report required by subsection (a) of this Code section and may provide in said form for further categorical divisions of the information listed in subsection (b) of this Code section.

(e)(1) In the event the department does not receive information responsive to subparagraph (c)(2)(A) of Code Section 31-6-40 by December 30, 2008, or an annual report from a health care facility requiring a certificate of need or an ambulatory surgical center or imaging center, whether or not exempt from obtaining a certificate of need under this chapter, on or before the date such report was due or receives a timely but incomplete report, the department shall notify the health care facility or center regarding the deficiencies and shall be authorized to fine such health care facility or center an amount not to exceed \$500.00 per day for every day up to 30 days and \$1,000.00

per day for every day over 30 days for every day of such untimely or deficient report.

(2) In the event the department does not receive an annual report from a health care facility within 180 days following the date such report was due or receives a timely but incomplete report which is not completed within such 180 days, the department shall be authorized to revoke such health care facility's certificate of need in accordance with Code Section 31-6-45.

(f) No application for a certificate of need under Article 3 of this chapter shall be considered as complete if the applicant has not submitted the annual report required by subsection (a) of this Code section. (Code 1981, § 31-6-70, enacted by Ga. L. 1985, p. 827, § 1; Ga. L. 1987, p. 573, § 1; Ga. L. 1988, p. 13, § 31; Ga. L. 1999, p. 296, § 22; Ga. L. 2008, p. 12, § 1-1/SB 433.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2008, "within such" was substituted for "with such" in paragraph (e)(2).

Editor's notes. — Ga. L. 2008, p. 12,

§ 3-1/SB 433, not codified by the General Assembly, provides that the amendment to this Code section shall only apply to applications submitted on or after July 1, 2008.

JUDICIAL DECISIONS

Exhaustion of administrative remedies. — Court of appeals erred in ruling that a society of surgery centers did not have to exhaust administrative remedies under the Georgia Administrative Procedure Act, O.C.G.A. § 50-13-19(a), in the society's action seeking to prevent the Georgia Department of Community Health (DCH) and the Department's Commissioner from requiring the Department's members to respond to certain disputed requests in an annual survey because the "acting outside statutory authority" exception to the exhaustion requirement did not apply; the society did not allege that DCH was acting wholly outside the Department's jurisdiction under O.C.G.A. § 31-6-70 to conduct surveys, but instead, the society claimed that the manner in which the survey was being conducted did not fully comply with the procedural requirements of the statute.

Ga. Dep't of Cmty. Health v. Ga. Soc'y of Ambulatory Surgery Ctrs., 290 Ga. 628, No. S11G1201, 2012 Ga. LEXIS 206 (2012).

Court of appeals erred in ruling that a society of surgery centers did not have to exhaust administrative remedies under the Georgia Administrative Procedure Act, O.C.G.A. § 50-13-19(a), in the society's action seeking to prevent the Georgia Department of Community Health and the Department's Commissioner from requiring its members to respond to certain disputed requests in an annual survey because the futility exception to the exhaustion requirement was inapplicable; the Commissioner's position in the lawsuit did not establish futility because actions taken to defend a lawsuit could not establish futility. Ga. Dep't of Cmty. Health v. Ga. Soc'y of Ambulatory Surgery Ctrs., 290 Ga. 628, No. S11G1201, 2012 Ga. LEXIS 206 (2012).

OPINIONS OF THE ATTORNEY GENERAL

Hospital authority may apply for certificate of need outside the hospi-

tal's area of operation and without the permission of the affected governing au-

thority or hospital authority board in the planned service area; provided, however, that in order to implement the certificate, permission to pursue the health care activity would be required. 1995 Op. Att'y Gen. No. 95-13.

ARTICLE 5

STATE COMMISSION ON THE EFFICACY OF THE CERTIFICATE OF NEED PROGRAM

31-6-90 through 31-6-95.

Repealed pursuant to Code Section 31-6-95, which provided for the repeal of this article on June 30, 2007.

Editor's notes. — This article was 31-6-95, enacted by Ga. L. 2005, p. 43, based on Code 1981, §§ 31-6-90 through § 1/HB 390.

CHAPTER 7

REGULATION AND CONSTRUCTION OF HOSPITALS
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31-7-2.	Classification of institutions.		
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31-7-2.2.	Determination that patients or residents in an institution, community living arrange- ment, or treatment program are in danger; relocation of patients or residents; suspen- sion of admissions.	31-7-11.	Written summary of hospital service charge rates.
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31-7-3.1.	Posting sign by hospital oper- ating emergency room notifi- ing individuals of legal rights in emergencies.	31-7-12.1.	Unlicensed personal care home; civil penalties; negli- gence per se for certain legal claims; declared nuisance dangerous to public health, safety, and welfare; criminal sanctions.
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Article 2

**Georgia Building Authority
(Hospital)**

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**Grants for Construction and
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- 31-7-90. "Control" defined; sale or lease by hospital authority subject to requirements of Article 15 of this chapter.
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31-7-410. Authority of Attorney General unaffected.
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made in violation of requirements of article null and void; violators subject to fine; Attorney General to instigate proceedings to impose fine within one year.

Cross references. — Authority of board of regents with regard to Eugene Talmadge Memorial Hospital, § 20-3-520 et seq. Requirement of smoke detectors for nursing homes, § 25-2-40. Designation of emergency receiving facilities for examination of mentally ill persons, alcoholics, and others, §§ 37-3-40 et seq., 37-7-40 et seq. Designation of evaluating facilities for examination of persons ordered by court to undergo evaluation for mental illness, alcoholism, and other conditions, §§ 37-3-60, 37-7-60. Authority of Department of Veterans Service and Veterans Service Board to construct and operate hospitals, nursing homes, and other facilities for care of war veterans, § 38-4-2. Registered nurses and licensed practical nurses, T. 43, C. 26. Physical therapists, T. 43, C. 33. Physicians, osteopaths, T. 43, C. 34.

Administrative rules and regulations. — Enforcement of licensing requirements, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Community Health, Healthcare Facility Regulation, Chapter 111-8-25.

Personal care homes, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Community Health, Healthcare Facility Regulation, Chapter 111-8-62.

Rules and regulations for residential mental health care facilities, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Community Health, Chapter 111-8-68.

Rules and regulations for proxy caregivers used in licensed healthcare facilities, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Community Health, Healthcare Facility Regulation, Chapter 111-8-100.

Rules and regulations for hospitals, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Human Resources, Office of Regulatory Services, Chapter 290-9-7.

Law reviews. — For article, “Baby Doe Cases: Compromise and Moral Dilemma,” see 34 Emory L.J. 545 (1985). For article, “State of Emergency: Why Georgia’s Standard of Care in Emergency Rooms is Harmful to Your Health,” see 45 Ga. L. Rev. 275 (2010). For article, “The Olmstead Decision: The Road to Dignity and Freedom,” see 26 Ga. St. U.L. Rev. 651 (2010). For article, “Olmstead’s Promise and Cohousing’s Potential,” see 26 Ga. St. U.L. Rev. 663 (2010). For article, “From the Inside Out: Personal Perspectives of Six Georgians on Their Institutional Experiences,” see 26 Ga. St. U.L. Rev. 741 (2010). For article, “The Constitutional Right to Community Services,” see 26 Ga. St. U.L. Rev. 763 (2010). For article, “Reconsidering Makin v. Hawaii: The Right of Medicaid Beneficiaries to Home-Based Services as an Alternative to Institutionalization,” see 26 Ga. St. U.L. Rev. 803 (2010). For article, “The Potential and Risks of Relying on Title II’s Integration Mandate to Close Segregated Institutions,” see 26 Ga. St. U.L. Rev. 855 (2010). For article, “Beyond Residential Segregation: The Application of Olmstead to Segregated Employment Settings,” see 26 Ga. St. U.L. Rev. 875 (2010). For article, “From Almshouses to Nursing Homes and Community Care: Lessons from Medicaid’s History,” see 26 Ga. St. U.L. Rev. 937 (2010).

For note, “Deinstitutionalization: Georgia’s Progress in Developing and Implementing an ‘Effectively Working Plan’ as Required by Olmstead v. L.C. ex rel,” see 25 Ga. St. U.L. Rev. 699 (2009).

JUDICIAL DECISIONS

Cited in *Richards v. Emanuel County Hosp. Auth.*, 603 F. Supp. 81 (S.D. Ga. 1984).

RESEARCH REFERENCES

Am. Jur. Trials. — Defending Hospital — Negligence of Physician-Employee, 19 Am. Jur. Trials 431.

Hospital Recovery Room Accidents, 25 Am. Jur. Trials 185.

Hospital Liability for Nursing Medication Errors, 29 Am. Jur. Trials 591.

Due Process Considerations in Suspension of Hospital Staff Privileges, 32 Am. Jur. Trials 1.

Establishing Hospital Liability under the Emergency Medical Treatment and Active Labor Act for "Patient Dumping", 62 Am. Jur. Trials 119.

Liability of Hospital or Other Emergency Room Service Provider for Injury to Patient or Visitor, 67 Am. Jur. Trials 271.

Medical and Legal Aspects of Chemical and Physical Restraint in the Nursing Home, 75 Am. Jur. Trials 1.

ALR. — Licensing and regulation of nursing or rest homes, 53 ALR4th 689.

What patient claims against doctor, hos-

pital, or similar health care provider are not subject to statutes specifically governing actions and damages for medical malpractice, 89 ALR4th 887.

Liability of hospital for injury to person invited or permitted to accompany patient during emergency room treatment, 90 ALR4th 478.

Liability of hospital, physician, or other medical personnel for death or injury from use of drugs to stimulate labor, 1 ALR5th 243.

Liability of hospital, physician, or other medical personnel for death or injury to mother or child caused by improper administration of, or failure to administer, anesthesia or tranquilizers, or similar drugs, during labor and delivery, 1 ALR5th 269.

Opposition to construction of new hospital or expansion of existing hospital's facilities as violation of Sherman Act (15 U.S.C. § 1 et seq.), 88 ALR Fed. 478.

ARTICLE 1

REGULATION OF HOSPITALS AND RELATED INSTITUTIONS

Editor's notes. — Ga. L. 2001, p. 1172, § 2, not codified by the General Assembly, provides that: "No hospital shall release for public use any autopsy photographs or images without the written permission of the family."

Law reviews. — For article, "Hospital Mergers, Market Concentration and the Herfindahl-Hirschman Index," see 33 Emory L.J. 869 (1985).

OPINIONS OF THE ATTORNEY GENERAL

Department cannot regulate abortion facilities not within definition of institution. — Law concerning regulation of hospitals and related institutions cannot be utilized by Department of Human Resources (now the Department of Community Health for these purposes) to extend regulation to abortions performed in facilities other than those embraced by

the term institution. 1973 Op. Att'y Gen. No. 73-24.

Casualty insurance carried by regulated institutions not subject to department's regulation. — Since the requirement of carrying adequate casualty insurance is a matter which does not pertain to protection of health and lives of patients in institutions nor to kind and

quality of building, equipment, facilities and institutional services that institutions shall have and use in order to properly care for patients, the Department of Human Resources (now the Department

of Community Health for these purposes) cannot legally pass a valid rule requiring institutions to carry adequate casualty insurance. 1967 Op. Att'y Gen. No. 67-177.

RESEARCH REFERENCES

ALR. — Liability of private noncharitable hospital or sanitarium for improper care or treatment of patient, 39 ALR 1431; 124 ALR 186.

Hospital's liability for care of convalescing patient, 70 ALR2d 377.

Malpractice in diagnosis and treatment of tetanus, 28 ALR3d 1364.

Hospital's liability for injury or death to patient resulting from or connected with

administration of anesthetic, 31 ALR3d 1114.

Hospital's liability to patient for injury allegedly sustained from absence of particular equipment intended for use in diagnosis or treatment of patient, 50 ALR3d 1141.

Hospital's liability for patient's injury or death resulting from escape or attempted escape, 37 ALR4th 200.

31-7-1. Definitions.

As used in this chapter, the term:

- (1) "Board" means the Board of Community Health.
- (2) "Commissioner" means the commissioner of community health.
- (3) "Department" means the Department of Community Health.
- (4) "Institution" means:

(A) Any building, facility, or place in which are provided two or more beds and other facilities and services that are used for persons received for examination, diagnosis, treatment, surgery, maternity care, nursing care, assisted living care, or personal care for periods continuing for 24 hours or longer and which is classified by the department, as provided for in this chapter, as either a hospital, nursing home, assisted living community, or personal care home;

(B) Any health facility wherein abortion procedures under subsections (b) and (c) of Code Section 16-12-141 are performed or are to be performed;

(C) Any building or facility, not under the operation or control of a hospital, which is primarily devoted to the provision of surgical treatment to patients not requiring hospitalization and which is classified by the department as an ambulatory surgical treatment center;

(D) Any fixed or mobile specimen collection center or health testing facility where specimens are taken from the human body for delivery to and examination in a licensed clinical laboratory or

where certain measurements such as height and weight determination, limited audio and visual tests, and electrocardiograms are made, excluding public health services operated by the state, its counties, or municipalities;

(E) Any building or facility where human births occur on a regular and ongoing basis and which is classified by the department as a birthing center;

(F) Any building or facility which is devoted to the provision of treatment and rehabilitative care for periods continuing for 24 hours or longer for persons who have traumatic brain injury, as defined in Code Section 37-3-1; or

(G) Any freestanding imaging center where magnetic resonance imaging, computed tomography (CT) scanning, positron emission tomography (PET) scanning, positron emission tomography/computed tomography, and other advanced imaging services as defined by the department by rule, but not including X-rays, fluoroscopy, or ultrasound services, are conducted in a location or setting not affiliated or attached to a hospital or in the offices of an individual private physician or single group practice of physicians and conducted exclusively for patients of that physician or group practice.

The term "institution" shall exclude all physicians' and dentists' private offices and treatment rooms in which such physicians or dentists primarily see, consult with, and treat patients.

(5) "Medical facility" means any licensed general hospital, destination cancer hospital, or specialty hospital, institutional infirmary, public health center, or diagnostic and treatment center.

(6) "Permit" means a permit issued by the department upon compliance with the rules and regulations of the department.

(7) "Provisional permit" means a permit issued on a conditional basis for one of the following reasons:

(A) To allow a newly established institution a reasonable but limited period of time to demonstrate that its operational procedures equal standards specified by the rules and regulations of the department; or

(B) To allow an existing institution a reasonable length of time to comply with rules and regulations, provided the institution shall present a plan of improvement acceptable to the department. (Code 1933, § 88-1901, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1969, p. 715, § 3; Ga. L. 1973, p. 635, § 3; Ga. L. 1978, p. 1757, § 1; Code 1933, § 88-1913, enacted by Ga. L. 1980, p. 1040, § 2; Ga. L. 1982, p. 3, § 31; Ga. L. 1982, p. 864, §§ 1, 3; Ga. L. 1983, p. 3, § 22; Ga.

L. 1989, p. 1566, § 2; Ga. L. 1990, p. 381, § 1; Ga. L. 1991, p. 94, § 31; Ga. L. 1993, p. 1445, § 4; Ga. L. 2002, p. 1324, § 1-5; Ga. L. 2003, p. 558, § 2; Ga. L. 2008, p. 12, § 2-8/SB 433; Ga. L. 2011, p. 227, § 11/SB 178.)

The 2011 amendment, effective July 1, 2011, in subparagraph (4)(A), inserted “assisted living care,” near the middle, and inserted “assisted living community,” near the end.

Cross references. — “Personal care home” defined, § 31-7-12. Conscious sedation, § 43-11-21.

Editor’s notes. — Ga. L. 1993, p. 1445, § 18.1, not codified by the General Assembly, provides: “Nothing in this Act shall be construed to repeal any provision of Chapter 5 of Title 37 of the Official Code of Georgia Annotated, the ‘Community Services Act for the Mentally Retarded.’”

JUDICIAL DECISIONS

Cited in Doe v. Bolton, 410 U.S. 179, 93 S. Ct. 739, 35 L. Ed. 2d 201 (1973); Reddix v. Chatham County Hosp. Auth., 134 Ga. App. 860, 216 S.E.2d 680 (1975); Redd v. State, 240 Ga. 753, 243 S.E.2d 16 (1978);

Primary Care Physicians Group v. Ledbetter, 634 F. Supp. 78 (N.D. Ga. 1986); Wofford v. Glynn Brunswick Mem. Hosp., 864 F.2d 117 (11th Cir. 1989).

OPINIONS OF THE ATTORNEY GENERAL

Department cannot regulate abortion facilities not within definition of institution. — Law concerning regulation of hospitals and institutions cannot be utilized by Department of Human Resources (now the Department of Community Health for these purposes) to extend regulation to abortions performed in facilities other than those embraced by the term institution. 1973 Op. Att’y Gen. No. 73-24.

Classification and operation by department of Gracewood and Central State Hospitals. — Department of Human Resources (now the Department of Community Health for these purposes) has authority to classify units of Gracewood State School and Hospital and Central State Hospital as a skilled nursing home and general hospital and has ample authority to operate these institutions. 1969 Op. Att’y Gen. No. 69-243.

RESEARCH REFERENCES

Am. Jur. 2d. — 40A Am. Jur. 2d, Hospitals and Asylums, §§ 1, 17 et seq.

Am. Jur. Pleading and Practice Forms. — 13B Am. Jur. Pleading and Practice Forms, Hospitals, § 2.

C.J.S. — 41 C.J.S., Hospitals, § 1 et seq.

ALR. — Liability of hospital, physician, or other medical personnel for death or injury to mother or child caused by improper procedures during caesarean delivery, 76 ALR4th 1112.

31-7-2. Classification of institutions.

The department shall classify institutions and adopt and promulgate rules and regulations applicable thereto according to the type of services rendered. (Ga. L. 1946, p. 34, § 1; Ga. L. 1958, p. 322, § 1; Code 1933, § 88-1904, enacted by Ga. L. 1964, p. 499, § 1.)

JUDICIAL DECISIONS

Department regulations governing free-standing emergency care clinics violated First Amendment rights of plaintiff physicians since the regulations were more extensive than necessary to serve the governmental interest of prohibiting misleading advertising and were im-

permissibly vague in providing that facilities which used such terms as "emergency," "crisis," "sudden," "acute" or a similar meaning term fell within the regulatory ambit. *Primary Care Physicians Group v. Ledbetter*, 634 F. Supp. 78 (N.D. Ga. 1986).

OPINIONS OF THE ATTORNEY GENERAL

Classification and operation by department of Gracewood and Central State Hospitals. — Department of Human Resources (now the Department of Community Health for these purposes) has authority to classify units of

Gracewood State School and Hospital and Central State Hospital as a skilled nursing home and general hospital and has ample authority to operate these institutions. 1969 Op. Att'y Gen. No. 69-243.

RESEARCH REFERENCES

C.J.S. — 39A C.J.S., Health and Environment, §§ 4, 6.

31-7-2.1. Rules and regulations; availability of reports of cited deficiencies; disclosure of survey worksheets and documents.

(a) The department shall adopt and promulgate such reasonable rules and regulations which in its judgment are necessary to protect the health and lives of patients and shall prescribe and set out the kind and quality of building, equipment, facilities, and institutional services which institutions shall have and use in order to properly care for their patients. Such rules and regulations shall include detailed quality standards for specific clinical services which shall be required to be met by an institution prior to offering the particular service. Such rules and regulations shall require that all nursing homes annually offer unless contraindicated, contingent on availability, an influenza virus vaccine to all medicare and Medicaid-eligible patients and private-pay patients in their facilities, in accordance with the rules and regulations established pursuant to this subsection. Such rules and regulations shall also require that all nursing homes annually offer unless contraindicated, contingent on availability, a pneumococcal bacteria vaccine to all medicare-eligible patients and all private-pay patients, 65 years of age or older, in their facilities, in accordance with the rules and regulations established pursuant to this subsection.

(b) The department shall compile and distribute, upon request, to interested persons a monthly list of those nursing homes and intermediate care homes surveyed, inspected, or investigated during the

month, indicating each facility for which deficiencies have been cited by the department, and indicating where reports of the cited deficiencies and information regarding any sanctions imposed can be obtained. The department shall also make available the survey reports upon written request.

(c) Except as provided in Code Sections 31-8-86 and 31-5-5, all worksheets or documents prepared or compiled by department surveyors in the course of nursing home surveys shall be provided upon written request to a nursing home which has received notice of intent to impose a remedy or sanction pursuant to 42 U.S.C. Section 1396r or Code Section 31-2-8; provided, however, that the names of residents and any other information that would reveal the identities of residents and the content of resident interviews shall not be disclosed except as provided in survey protocols of the federal Centers for Medicare and Medicaid Services. The department may charge a reasonable reproduction fee as provided in Article 4 of Chapter 18 of Title 50. (Code 1933, § 88-1903, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1991, p. 1603, § 1; Ga. L. 1996, p. 1024, § 1; Ga. L. 2002, p. 415, § 31; Ga. L. 2004, p. 443, § 1; Ga. L. 2008, p. 12, § 2-9/SB 433; Ga. L. 2009, p. 453, § 1-9/HB 228; Ga. L. 2011, p. 705, § 4-7/HB 214.)

The 2011 amendment, effective July 1, 2011, substituted “Code Section 31-2-8” for “Code Section 31-2-11” in the first sentence of subsection (c).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2003, an extra “the” was deleted preceding “federal Centers for Medicare and Medicaid Services” near the end of the first sentence in subsection (c).

Pursuant to Code Section 28-9-5, in 2004, a hyphen was inserted twice between the words “private pay” and once between the words “Medicaid eligible” and the words “medicare eligible” in the second and third sentence of subsection (a).

Pursuant to Code Section 28-9-5, in 2008, “Article 4 of Chapter 18 of Title 50.” was substituted for “Code Section 50-18-70 et seq.” in the last sentence of subsection (c).

U.S. Code. — Requirements for nursing facilities, 42 U.S.C. § 1396r.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

For note on 1991 amendment of this Code section, see 8 Ga. St. U.L. Rev. 74 (1992).

31-7-2.2. Determination that patients or residents in an institution, community living arrangement, or treatment program are in danger; relocation of patients or residents; suspension of admissions.

(a)(1) The commissioner may order the emergency relocation of patients or residents from an institution subject to licensure under this chapter, a community living arrangement subject to licensure under paragraph (8) of subsection (d) of Code Section 31-2-4, or a drug abuse treatment and education program subject to licensure under Chapter 5 of Title 26 when the commissioner has determined that the

patients or residents are subject to an imminent and substantial danger.

(2) When an order is issued under this subsection, the commissioner shall provide for:

(A) Notice to the patient or resident, his or her next of kin or guardian, and his or her physician of the emergency relocation and the reasons therefor;

(B) Relocation to the nearest appropriate institution, community living arrangement, or drug abuse treatment and education program; and

(C) Other protection designed to ensure the welfare and, when possible, the desires of the patient or resident.

(b)(1) The commissioner may order the emergency placement of a monitor in an institution subject to licensure under this chapter, a community living arrangement subject to licensure under paragraph (8) of subsection (d) of Code Section 31-2-4, or a drug abuse treatment and education program subject to licensure under Chapter 5 of Title 26 when one or more of the following conditions are present:

(A) The institution, community living arrangement, or drug abuse treatment and education program is operating without a permit or a license;

(B) The department has denied application for a permit or a license or has initiated action to revoke the existing permit or license of the institution, community living arrangement, or drug abuse treatment and education program;

(C) The institution, community living arrangement, or drug abuse treatment and education program is closing or plans to close and adequate arrangements for relocation of the patients or residents have not been made at least 30 days before the date of closure; or

(D) The health, safety, security, rights, or welfare of the patients or residents cannot be adequately assured by the institution, community living arrangement, or drug abuse treatment and education program.

(2) A monitor may be placed, pursuant to this subsection, in an institution, community living arrangement, or drug abuse treatment and education program for no more than ten days, during which time the monitor shall observe conditions and compliance with any recommended remedial action of the department by the institution, community living arrangement, or drug abuse treatment and education program. The monitor shall report to the department. The monitor

shall not assume any administrative responsibility within the institution, community living arrangement, or drug abuse treatment and education program nor shall the monitor be liable for any actions of the institution, community living arrangement, or drug abuse treatment and education program. The costs of placing a monitor in an institution, community living arrangement, or drug abuse treatment and education program shall be paid by the institution, community living arrangement, or drug abuse treatment and education program unless the order placing the monitor is determined to be invalid in a contested case proceeding under subsection (d) of this Code section, in which event the costs shall be paid by the state.

(c)(1) The commissioner may order the emergency prohibition of admissions to an institution subject to licensure under this chapter, a community living arrangement subject to licensure under paragraph (8) of subsection (d) of Code Section 31-2-4, or program subject to licensure under Chapter 5 of Title 26 when such institution, community living arrangement, or drug abuse treatment and education program has failed to correct a violation of departmental permit rules or regulations within a reasonable period of time, as specified in the department's corrective order, and the violation:

(A) Could jeopardize the health and safety of the residents or patients in the institution, community living arrangement, or drug abuse treatment and education program if allowed to remain uncorrected; or

(B) Is a repeat violation over a 12 month period, which is intentional or due to gross negligence.

(2) Admission to an institution, community living arrangement, or drug abuse treatment and education program may be suspended until the violation has been corrected or until the department has determined that the institution, community living arrangement, or drug abuse treatment and education program has undertaken the action necessary to effect correction of the violation.

(d) The commissioner may issue emergency orders pursuant to this Code section only if authorized by rules and regulations of the department. Unless otherwise provided in the order, an emergency order shall become effective immediately. The department shall hold a preliminary hearing within ten days following a request therefor by any institution, community living arrangement, or drug abuse treatment and education program affected by an emergency order. If at the preliminary hearing the order is determined by the department to be invalid, that order shall thereupon become void and of no effect. If at the preliminary hearing the order is determined by the department to be valid, that determination shall constitute a contested case under Chapter 13 of

Title 50, the “Georgia Administrative Procedure Act,” and that order shall remain in effect until determined invalid in a proceeding regarding the contested case or until rescinded by the commissioner, whichever is earlier. For purposes of this subsection, an emergency order is valid only if the order is authorized to be issued under this Code section and rules and regulations relating thereto.

(e) The powers provided by this Code section are cumulative of all other powers of the department, board, and commissioner. (Code 1981, § 31-7-2.2, enacted by Ga. L. 1983, p. 1323, § 1; Ga. L. 2003, p. 558, § 3; Ga. L. 2009, p. 453, § 1-26/HB 228.)

Administrative rules and regulations. — Monitoring, suspension of admissions, or transfer of patients or residents of hospitals and related institutions,

Official Compilation of the Rules and Regulations of the State of Georgia, Department of Human Resources, Public Health, Chapter 290-5-44.

JUDICIAL DECISIONS

Discretionary function of state agency. — Decision of the Department of Human Resources (now the Department of Community Health for these purposes) to review records, discuss with staff residents’ care needs in a personal care home, and obtain a physician’s statement regarding a resident’s condition, in order to determine if the resident was a suitable resident at the home, rather than taking other action, including reassessing the

patient or ordering emergency relocation, entailed policy judgments in which alternate courses of action were weighed in light of competing economic and social factors, and was the performance of a discretionary function or duty within the exception stated in O.C.G.A. § 50-21-24(2). *Bruton v. State Dep’t of Human Resources*, 235 Ga. App. 291, 509 S.E.2d 363 (1998).

31-7-3. Requirements for permits to operate institutions.

(a) Any person or persons responsible for the operation of any institution, or who may hereafter propose to establish and operate an institution and to provide specified clinical services, shall submit an application to the department for a permit to operate the institution and provide such services, such application to be made on forms prescribed by the department. No institution shall be operated in this state without such a permit, which shall be displayed in a conspicuous place on the premises. No clinical services shall be provided by an institution except as approved by the department in accordance with the rules and regulations established pursuant to Code Section 31-7-2.1. Failure or refusal to file an application for a permit shall constitute a violation of this chapter and shall be dealt with as provided for in Article 1 of Chapter 5 of this title. Following inspection and classification of the institution for which a permit is applied for, the department may issue or refuse to issue a permit or a provisional permit. Permits issued shall remain in force and effect until revoked or suspended; provisional permits issued shall remain in force and effect

for such limited period of time as may be specified by the department. Upon conclusion of the Atlantic Cardiovascular Patient Outcomes Research Team (C-PORT) Study, the department shall consider and analyze the data and conclusions of the study and promulgate rules pursuant to Code Section 31-7-2.1 to regulate the quality of care for therapeutic cardiac catheterization. All hospitals that participated in the study and are exempt from obtaining a certificate of need based on paragraph (22) of subsection (a) of Code Section 31-6-47 shall apply for a permit to continue providing therapeutic cardiac catheterization services once the department promulgates the rules required by this Code section.

(b) The department may accept the certification or accreditation of an institution by the American Osteopathy Association or a nationally recognized health care accreditation body, in accordance with specific standards, as evidence of that institution's compliance with the substantially equivalent departmental requirements for issuance or renewal of a permit or provisional permit, provided that such certification or accreditation is established prior to the issuance or renewal of such permits. The department may not require an additional departmental inspection of any institution whose certification or accreditation has been accepted by the department, except to the extent that such specific standards are less rigorous or less comprehensive than departmental requirements. Nothing contained in this Code section shall prohibit departmental inspections for violations of such standards or requirements nor shall it prohibit the revocation of or refusal to issue or renew permits, as authorized by Code Section 31-7-4, or for violation of any other applicable law or regulation pursuant thereto.

(c) The department shall require a facility licensed under this article and rules and regulations adopted pursuant thereto to have a written and regularly rehearsed disaster preparedness plan, approved by the department, for staff and residents to follow in case of fire, explosion, or other emergency, including interruption of electrical power supply, gas-heating supply, and water supply. The plan shall include written procedures for personnel to follow in an emergency including care of the resident; notification of attending physician and other persons responsible for the resident; and arrangements for transportation, for hospitalization, for alternate living arrangements, for emergency energy sources, or for other appropriate services.

(d)(1) When an application for licensure to operate a personal care home, as defined in subsection (a) of Code Section 31-7-12, or an assisted living community, as defined in Code Section 31-7-12.2, has been made, the department shall inform the office of the state long-term care ombudsman of the name and address of the applicant prior to issuing authority to operate or receive residents and shall

provide to the ombudsman program an opportunity to provide to the department information relevant to the applicant's fitness to operate as a licensed personal care home or an assisted living community.

(2) The department may consider any information provided under this subsection, where verified by appropriate licensing procedures, in determining whether an applicant meets the requirements for licensing.

(3) The department shall promulgate regulations setting forth the procedures by which the long-term care ombudsman program shall report information to the department or its designee as required by this subsection, including a consistent format for the reporting of information, safeguards to protect confidentiality, and specified types of information which shall be routinely provided by the long-term care ombudsman program.

(4) Nothing in this subsection shall be construed to provide any authority to the long-term care ombudsman program to license or refuse to license the operation of a personal care home or an assisted living community. (Ga. L. 1946, p. 34, § 3; Ga. L. 1958, p. 322, § 3; Code 1933, § 88-1905, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1981, p. 920, § 1; Ga. L. 1983, p. 783, § 1; Ga. L. 1994, p. 1358, § 1; Ga. L. 2008, p. 12, § 2-10/SB 433; Ga. L. 2011, p. 227, § 12/SB 178; Ga. L. 2012, p. 337, § 2/SB 361.)

The 2011 amendment, effective July 1, 2011, in paragraph (d)(1), inserted "or an assisted living community, as defined in Code Section 31-7-12.2," near the middle, and added "or an assisted living community" at the end; and added "or an assisted living community" at the end of paragraph (d)(4).

The 2012 amendment, effective July 1, 2012, substituted "the American Oste-

opathy Association or a nationally recognized health care accreditation body" for "the Joint Commission on the Accreditation of Hospitals, the American Osteopathy Association, or other accreditation body" near the middle of the first sentence of subsection (b).

Cross references. — Certificate of need required for offering health care and exemptions, § 31-6-40 et seq.

JUDICIAL DECISIONS

Permit requirement as prerequisite to recovery for services rendered. — Permit requirement is clearly a regulatory measure as to health, not a fund-raising or tax measure or mere business permit. Under these circumstances, in order to recover for services rendered, it must be shown that a hospital is properly licensed, or is a holder of the proper permit at the time services are rendered. *Proctor v. Lanier Collection Agency & Serv., Inc.*, 147 Ga. App. 104, 248 S.E.2d

179 (1978), overruled on other grounds, *Merrill Lynch v. Zimmerman*, 248 Ga. 580, 285 S.E.2d 181 (1981).

Cited in *Culverhouse v. Atlanta Ass'n for Convalescent Aged Persons*, 127 Ga. App. 574, 194 S.E.2d 299 (1972); *Doe v. Bolton*, 410 U.S. 179, 93 S. Ct. 739, 35 L. Ed. 2d 201 (1973); *Reddix v. Chatham County Hosp. Auth.*, 134 Ga. App. 860, 216 S.E.2d 680 (1975); *Todd v. Physicians & Surgeons Community Hosp.*, 165 Ga. App. 656, 302 S.E.2d 378 (1983); *Pied-*

mont Healthcare, Inc. v. Ga. Dep't of Human Res., 282 Ga. App. 302, 638 S.E.2d 447 (2006).

RESEARCH REFERENCES

Am. Jur. 2d. — 40A Am. Jur. 2d, Hospitals and Asylums, §§ 5, 6.

C.J.S. — 41 C.J.S., Hospitals, §§ 1 et seq., 8 et seq.

ALR. — Validity and construction of

statute requiring establishment of “need” as precondition to operation of hospital or other facilities for the care of sick people, 61 ALR3d 278.

31-7-3.1. Posting sign by hospital operating emergency room notifying individuals of legal rights in emergencies.

As a condition of obtaining or retaining the permit required by Code Section 31-7-3 to operate such institution, any hospital which operates an emergency room shall post conspicuously therein a sign notifying the public of the rights of individuals under federal or state law with respect to examination and treatment for emergency medical conditions and women in active labor. (Code 1981, § 31-7-3.1, enacted by Ga. L. 1990, p. 1810, § 1.)

31-7-3.2. Notice of cited deficiency and imposition of sanction.

(a) A nursing home or intermediate care home licensed under this article shall give notice in the event that such facility has been cited by the department for any deficiency for which the facility has received notice of the imposition of any sanction available under federal or state laws or regulations, except where a plan of correction is the only sanction to be imposed.

(b) A notice required under subsection (a) of this Code section shall be of a size and format prescribed by the department and shall contain the following:

(1) A list of each cited deficiency which has resulted in the notice being required;

(2) A description of any actions taken by or of any notices of intent to take action issued by federal or state entities as a result of such cited deficiencies;

(3) The telephone numbers of the state and community long-term care ombudsman programs; and

(4) A statement that a copy of the notice may be obtained upon written request accompanied by a self-addressed stamped envelope.

(c) A notice required by subsection (a) of this Code section shall be posted at the facility giving the notice:

(1) In an area readily accessible and continuously visible to the facility's residents and their representatives;

(2) Within 14 days after the facility receives notification of imposition of a sanction for a cited deficiency which requires the notice; and

(3) Until the department has determined such cited deficiencies no longer exist, at which time the notice may be removed.

(d) In addition to the posted notice required by subsection (c) of this Code section, a notice, containing the information set forth in subsection (b) of this Code section, shall also be provided by the facility upon written request. The facility shall be responsible for mailing a copy of such notice when the written request is accompanied by a postage paid self-addressed envelope.

(e) Each applicant to a facility shall receive upon written request with his application a copy of the most recent notice which has been distributed pursuant to this subsection. The facility may inform the applicant of any corrective actions taken in response to the cited deficiencies contained in such notice.

(f) In the event that the facility previously has been required to have posted or provided notice of the same cited deficiency arising from the same act, occurrence, or omission, this Code section should not be construed to require the facility to post or provide duplicate notice of such cited deficiency so long as the notice is made in a manner consistent with subsections (b) and (c) of this Code section.

(g) In the case of a violation of this Code section, the department may impose administrative sanctions as otherwise provided by law in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

(h) The department may promulgate rules and regulations to implement the provisions of this Code section. (Code 1981, § 31-7-3.2, enacted by Ga. L. 1991, p. 1603, § 2.)

Law reviews. — For note on 1991 enactment of this Code section, see 8 Ga. St. U.L. Rev. 74 (1992).

31-7-4. Denial or revocation of permits.

The department may refuse to grant a permit as provided for in Code Section 31-7-3 for the operation of any institution that does not fulfill the minimum requirements which the department may prescribe by rules and regulations, may revoke a permit which has been issued if an institution violates any of such rules and regulations, and may revoke a portion of a permit which has been issued as it relates to a specific

clinical service if the quality standards established by the department pursuant to Code Section 31-7-2.1 for such clinical service are not met; provided, however, that before any order is entered refusing a permit applied for or revoking a permit previously granted, the applicant or permit holder, as the case may be, shall be afforded an opportunity for a hearing as provided for in Article 1 of Chapter 5 of this title. All appeals from such orders and all rights of enforcement by injunction shall be governed by Article 1 of Chapter 5 of this title. (Ga. L. 1946, p. 34, §§ 3, 4; Ga. L. 1958, p. 322, § 3; Code 1933, § 88-1906, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 2008, p. 12, § 2-11/SB 433.)

JUDICIAL DECISIONS

Cited in *Bradfield v. Hospital Auth.*, 226 Ga. 575, 176 S.E.2d 92 (1970).

RESEARCH REFERENCES

Am. Jur. 2d. — 40A Am. Jur. 2d, Hospitals and Asylums, § 8 et seq.

ALR. — Validity and construction of statute requiring establishment of “need”

as precondition to operation of hospital or other facilities for the care of sick people, 61 ALR3d 278.

31-7-5. Exemptions from permit requirements; application of this chapter to federally operated institutions.

Code Section 31-7-3 shall not apply to the offices of physicians or others practicing the healing arts unless the facilities and services described in paragraph (4) of Code Section 31-7-1 are provided therein; nor shall this chapter apply to institutions operated exclusively by the federal government or by any of its agencies. (Ga. L. 1946, p. 34, § 6; Code 1933, § 88-1907, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 2008, p. 12, § 2-12/SB 433.)

JUDICIAL DECISIONS

Procedure in challenging constitutionality. — In an action by freestanding emergency care clinics challenging the constitutionality of O.C.G.A. § 31-7-1 et seq. (regulation of hospitals, etc.) on the ground that the statute’s exemption for private physicians’ offices violated the plaintiffs’ equal protection rights, a subpoena of documents from the Georgia Hospital Association, relating to lobbying efforts in support of the legislation, was

quashed as the documents were irrelevant to the question the court had to decide, that is, whether there was any conceivable purpose which may have justified the statute. *Primary Care Physicians Group v. Ledbetter*, 102 F.R.D. 254 (N.D. Ga. 1984).

Cited in *Tift County Hosp. Auth. v. MRS of Tifton, Ga., Inc.*, 255 Ga. 164, 335 S.E.2d 546 (1985).

31-7-6. Provision of data for research purposes by organizations rendering patient care; liability of providers of data; use of data; confidentiality.

(a) Any hospital, health care facility, medical or skilled nursing home, or other organization rendering patient care may provide information, interviews, reports, statements, memoranda, or other data relating to the condition and treatment of any person to research groups approved by the medical staff of the institution involved, to governmental health agencies, medical associations and societies, or to any in-hospital medical staff committee, to be used in the course of any study for the purpose of reducing rates of morbidity or mortality; and no liability of any kind or character for damages or other relief shall arise or be enforced against any person or organization by reason of having provided such information or material, or by reason of having released or published the findings and conclusions of such groups to advance medical research or medical education or to achieve the most effective use of health manpower and facilities, or by reason of having released or published generally a summary of such studies.

(b) The research groups approved by the medical staff of the institution involved, governmental health agencies, medical associations and societies, or any in-hospital medical staff committee shall use or publish material described in subsection (a) of this Code section only for the purpose of advancing medical research or medical education, or to achieve the most effective use of health manpower and facilities, in the interest of reducing rates of morbidity or mortality, except that a summary of such studies may be released by any such group for general publication.

(c) In all events the identity of any person whose condition or treatment has been studied pursuant to this Code section shall be confidential and shall not be revealed under any circumstances. (Code 1933, §§ 88-1908, 88-1909, 88-1910, enacted by Ga. L. 1966, p. 310, §§ 1-3.)

RESEARCH REFERENCES

C.J.S. — 41 C.J.S., Hospitals, § 33.

31-7-7. Refusal or revocation by public hospital of staff privileges.

(a) Whenever any licensed doctor of medicine, doctor of podiatric medicine, doctor of osteopathic medicine, or doctor of dentistry shall make application for permission to treat patients in any hospital owned or operated by the state, any political subdivision thereof, or any municipality, the hospital shall act in a nondiscriminatory manner

upon such application expeditiously and without unnecessary delay considering the applicant on the basis of the applicant's demonstrated training, experience, competence, and availability and reasonable objectives, including, but not limited to, the appropriate utilization of hospital facilities; but in no event shall final action thereon be taken later than 90 days following receipt of the application; provided, however, whenever the applicant is licensed by any governmental entity outside the continental limits of the United States, the hospital shall have 120 days to take action following receipt of the application. This subsection shall apply solely to applications by licensed doctors of medicine, doctors of podiatric medicine, doctors of osteopathic medicine, and doctors of dentistry who are not members of the staff of the hospital in which privileges are sought at the time an application is submitted and by those not privileged, at such time, to practice in such hospital under a previous grant of privileges. The provisions of this subsection shall not be construed so as to repeal the provisions of Code Section 31-7-15, to mandate hospitals to offer or provide any type of service or services not otherwise offered, or to prohibit a hospital with a clinical training program affiliated with a school of medicine from requiring an applicant to have a faculty teaching appointment as a condition of eligibility.

(b) Whenever any hospital owned or operated by the state, any political subdivision thereof, or any municipality shall refuse to grant a licensed doctor of medicine, doctor of podiatric medicine, doctor of osteopathic medicine, or doctor of dentistry the privilege of treating patients in the hospital, wholly or in part, or revoke the privilege of such licensed medical practitioner for treating patients in such hospital, wholly or in part, the hospital shall furnish to the licensed medical practitioner whose privilege has been refused or revoked, within ten days of such action, a written statement of the reasons therefor.

(c) The provisions of this Code section shall not be construed to mandate such hospital to grant or to prohibit such hospital from granting staff privileges to other licensed practitioners of the healing arts who are otherwise qualified for staff privileges pursuant to the bylaws of the governing body of the hospital and, in addition, shall not be construed to modify or restrict the rights of health service provider psychologists to be treated in a nondiscriminatory manner as provided in Code Sections 31-7-161 and 31-7-164. (Code 1933, § 88-1911, enacted by Ga. L. 1976, p. 326, § 1; Ga. L. 1978, p. 1969, § 1; Ga. L. 1984, p. 967, § 1; Ga. L. 1990, p. 561, § 1.)

JUDICIAL DECISIONS

Nurse-midwife was "licensed medical practitioner." — Woman licensed by the state as a registered nurse and certi-

fied as a nurse-midwife by the American College of Nurse Midwives was a "licensed medical practitioner" as contemplated un-

der O.C.G.A. § 31-7-7. *Sweeney v. Athens Regional Medical Ctr.*, 705 F. Supp. 1556 (M.D. Ga. 1989).

State action immunity. — Provision that staff privilege decisions may be based on “the appropriate utilization of hospital facilities” makes it foreseeable that a hospital authority would engage in anticompetitive conduct through its peer review activities, and, thus, the members of a peer review committee were shielded by state action immunity from a suit for injunctive relief by a doctor who was denied staff privileges. *Crosby v. Hospital Auth.*, 93 F.3d 1515 (11th Cir. 1996), cert. denied, 520 U.S. 1116, 117 S. Ct. 1246, 137 L. Ed. 2d 328 (1997).

Hospital held immune from federal antitrust claims. — Hospital which was acting in accordance with the state’s policy to displace competition with regulation in the area of denying or revoking hospital staff privileges was immune from federal antitrust claims under the “state action exemption” doctrine. *Sweeney v. Athens Regional Medical Ctr.*, 705 F. Supp. 1556 (M.D. Ga. 1989).

Injunction prohibiting hospital from limiting privileges. — Trial court did not abuse the court’s discretion in denying a hospital’s motion to dissolve an interlocutory and permanent injunction entered in favor of a group of doctors prohibiting the hospital from limiting the doctors from freely exercising their clinical privileges and practicing cardiology at the hospital, despite a resolution by the hospital’s board of directors prohibiting the doctors from exercising the privileges, as the prohibition denied the doctors certain procedural protections which could not be ignored when implementing exclusive provider contracts. *Satilla Health*

Servs., Inc. v. Bell, 280 Ga. App. 123, 633 S.E.2d 575 (2006).

Nondiscriminatory bylaws. — Public hospital bylaws excluding physicians who do not have allopathic postgraduate training from the medical staff do not violate O.C.G.A. § 31-7-7 when the bylaws are rationally related to differences in allopathic and nonallopathic training and promote a legitimate state interest in providing quality health care. *Silverstein v. Gwinnett Hosp. Auth.*, 672 F. Supp. 1444 (N.D. Ga. 1987), aff’d, 861 F.2d 1560 (11th Cir. 1988).

Public hospital bylaw requiring specific postgraduate specialty training or residency in order for physicians to be eligible for admission to the medical staff did not transgress the equal protection or due process rights of osteopathic physicians, nor did it offend the anti-discrimination provisions of O.C.G.A. § 31-7-7 (a). *Silverstein v. Gwinnett Hosp. Auth.*, 861 F.2d 1560 (11th Cir. 1988).

After the defendant hospital amended the hospital’s bylaws to require the hospital’s medical/dental staff to have \$1 million malpractice insurance, and subsequently terminated plaintiff staff physician’s hospital privileges for failure to provide proof of malpractice insurance coverage, the trial court correctly granted summary judgment in favor of the hospital on the physician’s Sherman Act claim against the hospital which included unlawful restraint of trade, monopoly, and boycott, and intentional interference with contract since the hospital’s decision was an administrative policy adopted by the hospital in furtherance of the administration, operation, maintenance, and control of the hospital. *Stein v. Tri-City Hosp. Auth.*, 192 Ga. App. 289, 384 S.E.2d 430, cert. denied, 192 Ga. App. 903, 384 S.E.2d 430 (1989).

RESEARCH REFERENCES

Am. Jur. 2d. — 40A Am. Jur. 2d, Hospitals and Asylums, § 16.

C.J.S. — 41 C.J.S., Hospitals, § 29 et seq.

ALR. — Propriety of hospital’s conditioning physician’s staff privileges on his carrying professional liability or malpractice insurance, 7 ALR4th 1238.

Exclusion of, or discrimination against, physician or surgeon by hospital, 28 ALR5th 107.

Denial by hospital of staff privileges or referrals to physician or other health care practitioner as violation of Sherman Act (15 USCS § 1 et seq.), 89 ALR Fed. 419.

What constitutes “state action” render-

ing public official's participation in private antitrust activity immune from applica- tion of federal antitrust laws, 109 ALR Fed. 758.

31-7-7.1. Denial of staff privileges based upon license, board certification, or membership in professional association.

Notwithstanding the provisions of Code Section 31-7-7, if a hospital offers or provides a service which is within the scope of practice of a person licensed as a doctor of podiatric medicine, doctor of osteopathic medicine, or doctor of dentistry, that hospital may not deny to any such licensee staff privileges at such hospital based solely upon that person's license, board certification, or specialty membership in a professional association. (Code 1981, § 31-7-7.1, enacted by Ga. L. 1997, p. 911, § 1; Ga. L. 1998, p. 548, § 1.)

31-7-8. Reports of disciplinary actions against persons authorized to practice professions under Chapter 11, 34, or 35 of Title 43.

(a) The hospital administrator or chief executive officer of each institution subject to this chapter shall submit a written report to the appropriate licensing board when a person who is authorized to practice medicine, osteopathy, podiatry, or dentistry in this state under Chapter 34, Chapter 35, or Chapter 11, respectively, of Title 43 and who is a member of the medical staff at the institution, has medical staff privileges at the institution, or has applied for medical staff privileges at the institution has his medical staff privileges denied, restricted, or revoked for any reason involving the medical care given his patient. Each such administrator or officer shall also report to the appropriate licensing board resignations from practice in that institution by persons licensed under Chapter 34, Chapter 35, or Chapter 11 of Title 43. This Code section shall not require reports of temporary suspensions for failure to comply with medical record regulations.

(b) The written report required by subsection (a) of this Code section shall be made within 20 working days following final action by the institution on the restriction, denial, or revocation of medical staff privileges. The results of any legal appeal of such action shall be reported within 20 working days following a final court decision on such appeal.

(c) The report required by this Code section shall contain a statement detailing the nature of the restriction, denial, or revocation of medical staff privileges, the date such action was taken, and the reasons for such action. If the action is a voluntary resignation or restriction of medical staff privileges which was the result of action

initiated by the institution, the report shall contain the circumstances involved therein.

(d) There shall be no civil or criminal liability on the part of, and no cause of action for damages shall arise against, any hospital administrator, chief executive officer, or other authorized person who in good faith complies with this Code section.

(e) Except as provided in this subsection and Chapter 34A of Title 43, information contained in any report made to the appropriate licensing board pursuant to this Code section shall be confidential and shall not be disclosed to the public. Access to such reports shall be limited to members of the appropriate licensing board or its staff for their use and to interested institutions for their use in the review of medical staff privileges at the institution.

(f) The failure of an institution to comply with this Code section shall be grounds for the denial, refusal to renew, or revocation of the permit for the operation of the institution issued pursuant to this chapter. (Code 1933, § 88-1912, enacted by Ga. L. 1977, p. 257, § 1; Ga. L. 1983, p. 882, § 1; Ga. L. 1990, p. 561, § 2; Ga. L. 2001, p. 192, § 1.)

Law reviews. — For note on the 2001 amendment to this Code section, see 18 Ga. St. U.L. Rev. 249 (2001).

RESEARCH REFERENCES

Am. Jur. 2d. — 40A Am. Jur. 2d, Hospitals and Asylums, § 16 et seq.

C.J.S. — 41 C.J.S., Hospitals, §§ 15 et seq., 29 et seq.

31-7-9. Reports by physicians and other personnel of nonaccidental injuries to patients; immunity from liability.

(a) As used in this Code section, the term “medical facility” includes, without being limited to, an ambulatory surgical treatment center defined in subparagraph (C) of paragraph (4) of Code Section 31-7-1 and a freestanding imaging center defined in subparagraph (G) of paragraph (4) of Code Section 31-7-1.

(b) Any:

(1) Physician, including any doctor of medicine licensed to practice under the laws of this state;

(2) Licensed registered nurse employed by a medical facility;

(3) Security personnel employed by a medical facility; or

(4) Other personnel employed by a medical facility whose employment duties involve the care and treatment of patients therein

having cause to believe that a patient has had physical injury or injuries inflicted upon him other than by accidental means shall report or cause reports to be made in accordance with this Code section.

(c) An oral report shall be made immediately by telephone or otherwise and shall be followed by a report in writing, if requested, to the person in charge of the medical facility or his designated delegate. The person in charge of the medical facility or his designated delegate shall then notify the local law enforcement agency having primary jurisdiction in the area in which the medical facility is located of the contents of the report. The report shall contain the name and address of the patient, the nature and extent of the patient's injuries, and any other information that the reporting person believes might be helpful in establishing the cause of the injuries and the identity of the perpetrator.

(d) Any person or persons participating in the making of a report or causing a report to be made to the appropriate police authority pursuant to this Code section or participating in any judicial proceeding or any other proceeding resulting therefrom shall in so doing be immune from any civil liability that might otherwise be incurred or imposed, providing such participation pursuant to this Code section shall be in good faith. (Code 1933, § 88-1913, enacted by Ga. L. 1980, p. 1040, § 2; Ga. L. 1982, p. 1249, §§ 1, 2; Ga. L. 1985, p. 898, § 1; Ga. L. 2008, p. 12, § 2-13/SB 433.)

Law reviews. — For article, “Hospital Georgia: A Realistic Approach,” see 37 Liability for Physician Negligence in Mercer L. Rev. 701 (1986).

31-7-10. Certification and approval of hospitals eligible to render service under a group nonprofit hospital insurance plan; supervision of such hospitals; withdrawal of approval.

The department shall (1) certify and approve hospitals applying therefor which may be found to be eligible to render hospital service under any group nonprofit hospital insurance plan, which plan may be approved and become effective, and (2) supervise the services rendered by hospitals operating under such plan, with authority to withdraw approval from any hospital which subsequently may, under rules and regulations of the board, become ineligible for rendering such services, provided that, in fixing rules and regulations in this connection or in enforcing such rules, hospitals interested therein shall be given opportunity to be heard. (Ga. L. 1937, p. 355, § 6.)

Cross references. — Nonprofit hospital service corporations, T. 33, C. 19. and Identity,” see 60 Emory L.J. 1257 (2011).

Law reviews. — For article, “Entity

RESEARCH REFERENCES

C.J.S. — 44 C.J.S., Insurance, § 53 et seq.

31-7-11. Written summary of hospital service charge rates.

(a) Any hospital shall, upon request, provide a written summary of certain hospital and related services charges, including but not limited to:

- (1) The average total charges per patient day for the facility's previous fiscal year;
- (2) The daily rate for a room in said hospital, which rate shall include an explanation of the categories of services included in said charge;
- (3) Anesthesia charges, with an explanation of the categories of services included in this charge;
- (4) Operating room charges;
- (5) Recovery room charges;
- (6) Intravenous administration charges;
- (7) Emergency room charges, with an explanation of the categories of services included in the charge;
- (8) The charge for the patient care kit or admission kit or other such items furnished to the patient on admission;
- (9) Charges for specific routine tests, including but not limited to a complete blood count, urinalysis, and chest X-ray; and
- (10) Charges for specific special tests, including but not limited to electrocardiogram, electroencephalogram, CAT scan of the head, CAT scan of liver, CAT scan of lungs, CAT scan of skeletal system, spirometry, and complete pulmonary function.

Such written summary of charges shall be composed in a simple clear fashion so as to enable consumers to compare hospital charges and make cost-effective decisions in the purchase of hospital services.

(b) The department shall adopt rules and regulations to implement the provisions of this Code section and shall implement such regulations as provided in Code Section 31-7-2.1. (Code 1981, § 31-7-11, enacted by Ga. L. 1983, p. 1307, § 1; Ga. L. 1984, p. 22, § 31.)

Code Commission notes. — Code 1984, p. 778, § 1. The former is set out Section 31-7-11 was added to the Code by above and the latter has been redesignated as Code Section 31-7-13 pursuant to both Ga. L. 1983, p. 1307, § 1 and Ga. L.

the authority granted in Code Section 28-9-5.

JUDICIAL DECISIONS

Contract construction. — Under the rules of contract construction, O.C.G.A. § 31-7-11(a) became a part of the contract between a health care provider and two uninsured patients regarding payment for services rendered by the provider, and the parties were presumed to have contracted with reference to the statute and the statute's effect on the contracts; hence, these rules of contract construction enabled the trial court to conclude that the agreement in the contracts to pay for "all charges" unambiguously referred to the written summary of specific charges required by O.C.G.A. § 31-7-11(a) which established the price terms on which the parties intended to bind themselves. *Morrell v. Wellstar Health Sys., Inc.*, 280 Ga. App. 1, 633 S.E.2d 68 (2006).

Breach of contract claim. — Appellants' breach of contract claim was properly dismissed as appellants were free to avail themselves of the procedure established in O.C.G.A. § 31-7-11, allowing purchasers of hospital services to use the mandatorily available pricing information to compare hospital charges and to make cost-effective decisions; having agreed to pay a hospital corporation's fees and charges, appellants could not argue that the appellants agreed to something else. *Satterfield v. S. Reg'l Health Sys.*, 280 Ga. App. 584, 634 S.E.2d 530 (2006).

Cited in *Cox v. Athens Reg'l Med. Ctr., Inc.*, 279 Ga. App. 586, 631 S.E.2d 792 (2006).

31-7-12. "Personal care home" and "personal services" defined; licensure and registration; inspection by local boards; fees; investigations; waiver, variance, or exemption.

(a) As used in this Code section, the term:

(1) "Personal care home" means any dwelling, whether operated for profit or not, which undertakes through its ownership or management to provide or arrange for the provision of housing, food service, and one or more personal services for two or more adults who are not related to the owner or administrator by blood or marriage. This term shall not include host homes, as defined in paragraph (18) of subsection (b) of Code Section 37-1-20.

(2) "Personal services" includes, but is not limited to, individual assistance with or supervision of self-administered medication and essential activities of daily living such as eating, bathing, grooming, dressing, and toileting. Personal services shall not include medical, nursing, or health services; provided, however, that the department shall be authorized to grant a waiver of this provision in the same manner as provided for in Code Section 31-7-12.3 for the waiver of rules and regulations and in the same manner and only to the same extent as granted on or before June 30, 2011.

(b) All personal care homes shall be licensed as provided for in Code Section 31-7-3, except that, in lieu of licensure, the department may

require persons who operate personal care homes with two or three beds for nonfamily adults to comply with registration requirements delineated by the department. Such registration requirements within this category shall authorize the department to promulgate pursuant to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," reasonable standards to protect the health, safety, and welfare of the occupants of such personal care homes.

(c) Upon the designation by the department and with the consent of county boards of health, such boards may act as agents to the department in performing inspections and other authorized functions regarding personal care homes licensed under this chapter. With approval of the department, county boards of health may establish inspection fees to defray part of the costs of inspections performed for the department.

(d) The state ombudsman or community ombudsman, on that ombudsman's initiative or in response to complaints made by or on behalf of residents of a registered or licensed personal care home, may conduct investigations in matters within the ombudsman's powers and duties.

(e) The department shall promulgate procedures to govern the waiver, variance, and exemption process related to personal care homes pursuant to Chapter 2 of this title. Such procedures shall include published, measurable criteria for the decision process, shall take into account the need for protection of public and individual health, care, and safety, and shall afford an opportunity for public input into the process. (Code 1981, § 31-7-11, enacted by Ga. L. 1983, p. 1323, § 1.1; Code 1981, § 31-7-12, as redesignated by Ga. L. 1984, p. 22, § 31; Ga. L. 1984, p. 649, § 1; Ga. L. 1985, p. 952, § 1; Ga. L. 1988, p. 13, § 31; Ga. L. 1992, p. 1392, § 1; Ga. L. 1993, p. 317, § 1; Ga. L. 2008, p. 263, § 1/SB 469; Ga. L. 2009, p. 453, § 1-27/HB 228; Ga. L. 2011, p. 227, § 13/SB 178.)

The 2011 amendment, effective July 1, 2011, added the last sentence in paragraph (a)(2).

Code Commission notes. — Code Section 31-7-11 was added to the Code by both Ga. L. 1983, p. 1307, § 1 and Ga. L.

1983, p. 1323, § 1.1. The latter section was redesignated as Code Section 31-7-12 by Ga. L. 1984, p. 22, § 31, effective February 3, 1984, pursuant to the authority granted in Code Section 28-9-5.

31-7-12.1. Unlicensed personal care home; civil penalties; negligence per se for certain legal claims; declared nuisance dangerous to public health, safety, and welfare; criminal sanctions.

(a) A facility shall be deemed to be an "unlicensed personal care home" if it is unlicensed and not exempt from licensure and:

(1) The facility is providing personal services and is operating as a personal care home as those terms are defined in Code Section 31-7-12;

(2) The facility is held out as or represented as providing personal services and operating as a personal care home as those terms are defined in Code Section 31-7-12; or

(3) The facility represents itself as a licensed personal care home.

(b) Any unlicensed personal care home shall be assessed by the department, after opportunity for hearing in accordance with the provisions of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," a civil penalty in the amount of \$100.00 per bed per day for each day of violation of subsection (b) of Code Section 31-7-12. The department shall send a notice by certified mail or statutory overnight delivery stating that licensure is required and the department's intent to impose a civil penalty. Such notice shall be deemed to be constructively received on the date of the first attempt to deliver such notice by the United States Postal Service. The department shall take no action to collect such civil penalty until after opportunity for a hearing.

(c) In addition to other remedies available to the department, the civil penalty authorized by subsection (b) of this Code section shall be doubled if the owner or operator continues to operate the unlicensed personal care home, after receipt of notice pursuant to subsection (b) of this Code section.

(d) The owner or operator of a personal care home who is assessed a civil penalty in accordance with this Code section may have review of such civil penalty by appeal to the superior court in the county in which the action arose or to the Superior Court of Fulton County in accordance with the provisions of Code Section 31-5-3.

(e) In addition to the sanctions authorized herein, an unlicensed personal care home shall be deemed to be negligent per se in the event of any claim for personal injury or wrongful death of a resident.

(f) It is declared that the owning or operating of an unlicensed personal care home in this state constitutes a nuisance dangerous to the public health, safety, and welfare. Any person who owns or operates a personal care home in violation of subsection (b) of Code Section 31-7-12 shall be guilty of a misdemeanor. Upon a second such violation, such person shall be guilty of a felony. (Code 1981, § 31-7-12.1, enacted by Ga. L. 1994, p. 461, § 1; Ga. L. 2000, p. 1589, § 3; Ga. L. 2011, p. 227, § 13A/SB 178; Ga. L. 2012, p. 351, § 3/HB 1110.)

The 2011 amendment, effective July 1, 2011, added subsection (f).

The 2012 amendment, effective July 1, 2012, deleted former subsection (b), which read: "Personal care homes in existence on July 1, 1994, which obtain li-

censes from the department no later than October 1, 1994, shall not be subject to the penalties set out in this Code section.”; redesignated former subsection (c) as present subsection (b) and, in subsection (b), in the first sentence, substituted “Any” for “Except as provided in subsection (b) of this Code section, any”, in the second sentence, substituted “the department’s intent to impose a civil penalty” for “including a period for obtaining licensure with an expiration date”, deleted the former fourth and fifth sentences, which read: “For unlicensed personal care homes which were not in existence on July 1, 1994, the civil penalty provided by this subsection shall be calculated as beginning on the expiration date of the notice. For unlicensed personal care homes which were in existence on July 1, 1994, the civil penalty provided by this subsection shall be calculated as beginning on the expira-

tion date of the notice or on October 1, 1994, whichever is later.”; redesignated former subsection (d) as present subsection (c); rewrote subsection (c); redesignated former subsection (e) as present subsection (d) and, in subsection (d), inserted “owner or” near the beginning; redesignated former subsection (f) as present subsection (e); and added subsection (f).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1994, “July 1, 1994,” was substituted for “the effective date of this Code section” in subsection (b) and “July 1, 1994” was substituted for “the effective date of this Code Section” in subsection (c).

Editor’s notes. — Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provided that the 2000 amendment was applicable to notices delivered on or after July 1, 2000.

31-7-12.2. Regulation and licensing of assisted living communities; legislative intent; definitions; procedures; requirements for medication aides.

(a) It is the intention of the General Assembly to establish a new licensure category of long-term care provider which shall be referred to as “assisted living community.” An assisted living community shall be authorized, in accordance with this Code section, to provide certain services that are beyond the scope of services that a personal care home is authorized to provide.

(b) As used in this Code section, the term:

(1) “Ambulatory” means the ability to move from place to place by walking, either unaided or aided by a prosthesis, brace, cane, crutches, walker, or hand rails, or by propelling a wheelchair and to respond to an emergency condition, whether caused by fire or otherwise, and escape with minimal human assistance using the normal means of egress.

(2) “Assisted living care” includes:

(A) Personal services, which includes, but is not limited to, individual assistance with or supervision of self-administered medication and essential activities of daily living such as eating, bathing, grooming, dressing, and toileting;

(B) The administration of medications by a medication aide in accordance with this Code section; and

(C) The provision of assisted self-preservation in accordance with this Code section.

(3) “Assisted living community” means a personal care home with a minimum of 25 beds that is licensed as an assisted living community pursuant to Code Section 31-7-3.

(4) “Assisted self-preservation” means the capacity of a resident to be evacuated from an assisted living community, to a designated point of safety and within an established period of time as determined by the Office of the Safety Fire Commissioner. Assisted self-preservation is a function of all of the following:

(A) The condition of the individual;

(B) The assistance that is available to be provided to the individual by the staff of the assisted living community; and

(C) The construction of the building in which the assisted living community is housed, including whether such building meets the state fire safety requirements applicable to an existing health care occupancy.

(5) “Continuous medical or nursing care” means medical or nursing care required other than on a periodic basis or for a short-term illness.

(c) An assisted living community shall not admit or retain an individual who is not ambulatory unless the individual is capable of assisted self-preservation. In the event that the department determines that one or more residents of an assisted living community are not capable of assisted self-preservation due to the condition of the resident, the capabilities of the staff of the assisted living community, the construction of the building in which the assisted living community is housed, or a combination of these factors, the department shall have the authority to consider any of the following actions:

(1) An increase in the staffing of the assisted living community to a level that is sufficient to ensure that each resident is capable of assisted self-preservation;

(2) A change in the staffing assignments of the assisted living community if such change would ensure that each resident is capable of assisted self-preservation;

(3) A change in rooms or the location of residents as necessary to ensure that each resident is capable of assisted self-preservation;

(4) The utilization of any specialized equipment that would ensure that each resident is capable of assisted self-preservation. For purposes of this paragraph, specialized equipment shall only include a

prosthesis, brace, cane, crutches, walker, hand rails, and a wheelchair;

(5) A cessation in the further admission of individuals who are not ambulatory until such time that the assisted living community has taken actions necessary to ensure that all residents are capable of assisted self-preservation;

(6) The transfer or discharge of any resident who is not capable of assisted self-preservation; and

(7) Any action set forth in Code Section 31-2-8.

(d) An assisted living community shall maintain a current list of all residents who are not ambulatory but who are capable of assisted self-preservation. The list shall be provided upon request to the department and maintained at all times by the assisted living community.

(e) An assisted living community shall maintain fire detection and prevention equipment, including visual signals with alarms for hearing impaired residents, in accordance with manufacturer instructions and the requirements of the Office of the Safety Fire Commissioner.

(f) An assisted living community shall not admit or retain an individual who is in need of continuous medical or nursing care. Other than as permitted by a medication aide pursuant to paragraph (7) of subsection (g) of this Code section, medical, nursing, or health services required on a periodic basis, or for short-term illness, shall not be provided as services of an assisted living community. When such services are required, they shall be purchased by the resident or the resident's representative or legal surrogate, if any, from appropriate providers managed independently from the assisted living community. An assisted living community may assist in arranging for such services, but not in the provision of such services.

(g)(1) An assisted living community may employ certified medication aides for the purpose of performing the technical aspects of the administration of certain medications in accordance with this subsection. An assisted living community that employs one or more certified medication aides must have a safe medication and treatment administration system that meets all the requirements of this subsection.

(2) The department shall establish and maintain a medication aide registry containing the names of each individual in Georgia who is certified by the department as a medication aide. An assisted living community may not employ an individual as a medication aide unless the individual is listed in the medication aide registry in good standing.

(3) An applicant for certification as a medication aide shall meet the following qualifications:

(A) Be a Georgia certified nurse aide with current certification in good standing;

(B) Have successfully completed a state-approved medication aide training program administered by a Georgia licensed registered nurse, pharmacist, or physician;

(C) Have successfully passed, with a minimum passing score of 80 percent, a written competency examination; and

(D) Have demonstrated the requisite clinical skills to serve as a medication aide in accordance with a standardized checklist developed by the department.

(4) A record of the successful completion of the written competency examination and clinical skills standardized checklist by an applicant for certification as a medication aide shall be included in the medication aide registry within 30 business days of evaluation. Each candidate for certification as a medication aide shall have the opportunity to take the written competency examination three times before being required to retake and successfully complete the medication aide training program.

(5) An assisted living community shall annually conduct a comprehensive clinical skills competency review of each medication aide employed by the assisted living community.

(6) Certificates issued pursuant to this subsection shall be renewed biennially according to schedules and fees approved by the department.

(7) A medication aide who meets the criteria established in this subsection shall be permitted to perform the following tasks in an assisted living community in accordance with the written instructions of a physician:

(A) Administer physician ordered oral, ophthalmic, topical, otic, nasal, vaginal, and rectal medications;

(B) Administer insulin, epinephrine, and B12 pursuant to physician direction and protocol;

(C) Administer medication via a metered dose inhaler;

(D) Conduct finger stick blood glucose testing following established protocol;

(E) Administer a commercially prepared disposable enema as ordered by a physician; and

(F) Assist residents in the supervision of self-administration of medication.

(8) A medication aide shall record in the medication administration record all medications that the medication aide has personally administered to a resident of an assisted living community and any refusal of a resident to take a medication. A medication aide shall observe a resident to whom medication has been administered and report any changes in the condition of such resident to the personal representative or legal surrogate of the resident.

(9) All medication administered by a medication aide in accordance with this Code section shall be in unit or multidose packaging.

(10) An assisted living community that employs one or more medication aides to administer medications in accordance with this subsection shall secure the services of a licensed pharmacist to perform the following duties:

(A) Perform a quarterly review of the drug regimen of each resident of the assisted living community and report any irregularities to the assisted living community administrator;

(B) Remove for proper disposal any drugs that are expired, discontinued, in a deteriorated condition, or where the resident for whom such drugs were ordered is no longer a resident;

(C) Establish or review policies and procedures for safe and effective drug therapy, distribution, use, and control; and

(D) Monitor compliance with established policies and procedures for medication handling and storage.

(11) An assisted living community that employs one or more medication aides to administer medications in accordance with this subsection shall ensure that each medication aide receives ongoing medication training as prescribed by the department. A registered professional nurse or pharmacist shall conduct random medication administration observations on a quarterly basis and report any issues to the assisted living community administrator.

(h) An assisted living community shall establish a written care plan for each resident. Such care plan shall describe the needs of the resident and how such needs will be met.

(i) An assisted living community shall not be permitted to enroll as a provider of medical assistance, as defined in paragraph (6) of Code Section 49-4-141, or receive any funds authorized or paid pursuant to Title XIX of the Social Security Act. (Code 1981, § 31-7-12.2, enacted by Ga. L. 2011, p. 227, § 1/SB 178; Ga. L. 2012, p. 775, § 31/HB 942.)

Effective date. — This Code section became effective July 1, 2011.

The 2012 amendment, effective May 1, 2012, part of an Act to revise, modernize, and correct the Code, revised language in the introductory language of subsection (b) and in paragraph (c)(7).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2011, “31-2-8” was substituted for “31-2-11” at the end of paragraph (c)(7).

31-7-12.3. Adoption of rules and regulations.

The department shall adopt rules and regulations to implement Code Sections 31-7-12 and 31-7-12.2. Such rules and regulations shall establish meaningful distinctions between the levels of care provided by personal care homes, assisted living communities, and nursing homes but shall not curtail the scope or levels of services provided by personal care homes or nursing homes as of June 30, 2011; provided, however, that nothing in this chapter shall preclude the department from issuing waivers or variances to personal care homes of the rules and regulations established pursuant to this Code section. Notwithstanding Code Section 31-2-9 or 31-7-12.2, the department shall not grant a waiver or variance unless:

- (1) There are adequate standards affording protection for the health and safety of residents of the personal care home;
- (2) The resident of the personal care home provides a medical assessment conducted by a licensed health care professional who is unaffiliated with the personal care home which identifies the needs of the resident; and
- (3) The department finds that the personal care home can provide or arrange for the appropriate level of care for the resident. (Code 1981, § 31-7-12.3, enacted by Ga. L. 2011, p. 227, § 1/SB 178.)

Effective date. — This Code section became effective July 1, 2011.

31-7-13. Transfer of property upon death of patient.

(a) Whenever any person dies in a hospital licensed pursuant to this chapter, in any federal hospital operating within this state, or any nursing home operated within this state, such hospital or nursing home shall be authorized but shall not be required to transfer possession of any property, tangible or intangible, of such patient which is in the possession of the hospital or nursing home, to the following persons:

- (1) To the person designated by the patient in writing upon admission to the hospital or nursing home, if any;
- (2) To the surviving spouse of the patient, if any;

(3) If no surviving spouse, to any adult child of the patient, and if no such adult child, to any person acting in loco parentis of any minor child;

(4) If no surviving spouse or surviving children, to either parent of the patient;

(5) If none of the above, then to any brother or sister of the patient;
or

(6) If none of the above, to the person assuming responsibility for burial of the patient.

(b) The transfer of possession to the surviving spouse or any of the other family members or persons listed in subsection (a) of this Code section shall operate as a complete acquittal and discharge to the hospital or nursing home of liability from any suit, claim, or demand of whatever nature by any heir, distributee, or creditor of the patient, or any other person as relates to the property transferred. Such distribution is authorized to be made as provided in this Code section without the necessity of administration of the estate of the patient and without the necessity of obtaining an order that no administration of such estate is necessary.

(c) The transfer of possession provided for in this Code section shall in no way affect the legal ownership or title to any property so transferred.

(d) The provisions of any law of descent or distribution or any will or other instrument providing for disposition of property shall not be impaired by this Code section, and any person to whom property is transferred pursuant to this Code section may be required to transfer that property in conformity with the disposition of property required by such laws of descent or distribution or such will or other instrument. (Code 1981, § 31-7-11, enacted by Ga. L. 1984, p. 778, § 1; Ga. L. 2009, p. 8, § 31/SB 46.)

Code Commission notes. — Code Section 31-7-11 was added to the Code by both Ga. L. 1983, p. 1307, § 1, and Ga. L. 1984, p. 778, § 1. The former is set out as

Code Section 31-7-11 and the latter is set out above as Code Section 31-7-13 pursuant to the authority granted by Code Section 28-9-5.

31-7-14. Blood supplies; blood donor storage programs.

(a) When any person is admitted to a medical facility for surgical or medical treatment which has been scheduled in advance, neither the medical facility nor any licensed medical practitioner shall prohibit such person from providing a blood donor or donors to furnish blood which may be needed in such surgery or medical treatment, provided that:

(1) The blood donation will not be detrimental to the donor or the recipient of such blood or any of its components; and

(2) The donation is made not earlier than ten working days before the date of the anticipated transfusion and not later than the evening of the fourth full working day before the date of the anticipated transfusion.

(b) If the person receiving surgical or other medical treatment requires more blood than is furnished by the provided donor or donors, then the medical facility may utilize its regular sources to supply the necessary amount. If less blood than the amount that is furnished by the provided donor or donors is used in the surgery or medical treatment, then the excess blood may be retained by the medical facility or turned over to a community blood bank.

(c) This Code section shall not apply to any emergency surgical or medical treatment.

(d) This Code section shall not apply to any medical facility which does not maintain a system for the collection, processing, and storage of blood and its component parts or to any medical facility which allows through a community blood bank a person to provide a blood donor or donors to furnish blood which may be needed in the person's surgery or medical treatment.

(e) This Code section shall not apply to any person who is under the jurisdiction of the Department of Corrections.

(f) A medical facility or licensed medical practitioner providing health care to a person who utilizes the provisions of this Code section shall not be liable in damages for injury or death occurring during or as a result of the medical or surgical treatment if the injury or death results from use of the blood supplied by the donors selected by the patient, unless that facility or practitioner is grossly negligent with regard to such use.

(g) A medical facility or group of medical facilities may organize and operate short-term blood donor storage programs for the purpose of perpetuating a group of donors of a common blood type for emergency and planned surgical needs. (Code 1981, § 31-7-14, enacted by Ga. L. 1987, p. 1091, § 1.)

Code Commission notes. — Ga. L. 1987, p. 1091, § 1 and Ga. L. 1987, p. 1494, § 1 enacted different Code sections designated Code Section 31-7-14. Pursu-

ant to Code Section 28-9-5, the Code section enacted by Ga. 1987, p. 1494, § 1 was redesignated as Code Section 31-7-15.

31-7-15. Review of professional practices by a peer review committee.

(a) A hospital or ambulatory surgical center shall provide for the review of professional practices in the hospital or ambulatory surgical center for the purpose of reducing morbidity and mortality and for the improvement of the care of patients in the hospital or ambulatory surgical center. This review shall include, but shall not be limited to, the following:

(1) The quality of the care provided to patients as rendered in the hospital or ambulatory surgical center;

(2) The review of medical treatment and diagnostic and surgical procedures in order to foster safe and adequate treatment of patients in the hospital or ambulatory surgical center; and

(3) The evaluation of medical and health care services or the qualifications and professional competence of persons performing or seeking to perform such services.

(b) The functions required by subsection (a) of this Code section may be performed by a "peer review committee," defined as a committee of physicians appointed by a state or local or specialty medical society or appointed by the governing board or medical staff of a licensed hospital or ambulatory surgical center or any other organization formed pursuant to state or federal law and engaged by the hospital or ambulatory surgical center for the purpose of performing such functions required by subsection (a) of this Code section.

(c) Compliance with the above provisions of subsection (a) of this Code section shall constitute a requirement for granting or renewing the permit of a hospital or ambulatory surgical center. The functions required by this Code section shall be carried out under the regulations and supervision of the department.

(d) Proceedings and records conducted or generated in an attempt to comply with the duties imposed by subsection (a) of this Code section shall not be subject to the provisions of either Chapter 14 or Article 4 of Chapter 18 of Title 50.

(e) Nothing in this or any other Code section shall be deemed to require any hospital or ambulatory surgical center to grant medical staff membership or privileges to any licensed practitioner of the healing arts. (Code 1981, § 31-7-15, enacted by Ga. L. 1987, p. 1494, § 1.)

Code Commission notes. — Ga. L. 1494, § 1 enacted different Code sections 1987, p. 1091, § 1 and Ga. L. 1987, p. designated Code Section 31-7-14. Pursu-

ant to Code Section 28-9-5, the Code section enacted by Ga. 1987, p. 1494, § 1 was redesignated as Code Section 31-7-15.

JUDICIAL DECISIONS

What constitutes peer review records. — Reports generated as part of the state's hospital licensing activities, rather than as peer review activities, are not protected from disclosure under the Open Records Act, O.C.G.A. § 50-18-70 et seq. *Georgia Hosp. Ass'n v. Ledbetter*, 260 Ga. 477, 396 S.E.2d 488 (1990).

Scope of peer review. — Nothing in O.C.G.A. § 31-7-131(3)(B)(vi) implies that every part of the review in O.C.G.A. § 31-7-15 constitutes peer review. *Hosp. Auth. v. Meeks*, 285 Ga. 521, 678 S.E.2d 71 (2009).

No expansion of civil immunity afforded to peer review groups. — O.C.G.A. § 31-7-15 does not expand the privilege set forth in O.C.G.A. § 31-7-133(a) to those proceedings and records of a peer review committee which involve only the credentialing process and not a peer review function. The same analysis is equally applicable in holding that § 31-7-15 does not expand the civil immunity otherwise afforded to peer review groups under O.C.G.A. § 31-7-132(a) so as to include all aspects of the credentialing process. *Hosp. Auth. v. Meeks*, 285 Ga. 521, 678 S.E.2d 71 (2009).

State action immunity. — Action of

individual doctors on a peer review committee were actions of a hospital authority for purposes of the state action immunity doctrine and, thus, the members were immune from an antitrust action brought by a doctor who was denied staff privileges. *Crosby v. Hospital Auth.*, 93 F.3d 1515 (11th Cir. 1996), cert. denied, 520 U.S. 1116, 117 S. Ct. 1246, 137 L. Ed. 2d 328 (1997).

Hospital bylaws are not contract. — Hospital bylaws, by themselves, do not constitute a contract per se between the hospital and the doctors because there is no mutual exchange of consideration which brought the bylaws into existence. *Robles v. Humana Hosp. Cartersville*, 785 F. Supp. 989 (N.D. Ga. 1992).

Bylaws may be enforced by injunction. — Hospital is bound by the bylaws the hospital creates and if the hospital does not follow the procedures established by the bylaws, the court can enjoin the hospital to follow those procedures. *Robles v. Humana Hosp. Cartersville*, 785 F. Supp. 989 (N.D. Ga. 1992).

Cited in *Hosp. Auth. of Valdosta v. Meeks*, 294 Ga. App. 629, 669 S.E.2d 667 (2008).

RESEARCH REFERENCES

ALR. — Right of voluntary disclosure of privileged proceedings of hospital medical review or doctor evaluation processes, 60 ALR4th 1273.

Scope and extent of protection from disclosure of medical peer review proceedings relating to claim in medical malpractice action, 69 ALR5th 559.

31-7-16. Determination or pronouncement of death of patient who died in facility classified as nursing home.

When a patient dies in any facility classified as a nursing home by the department and operating under a permit issued by the department, a physician assistant or a registered professional nurse licensed in this state and employed by such nursing home at the time of apparent death of such person, in the absence of a physician, may make the determination and pronouncement of the death of said patient; provided,

however, that, when said patient is a registered organ donor, only a physician may make the determination or pronouncement of death; provided, further, that when it appears that a patient died from other than natural causes, only a physician may make the determination or pronouncement of death. Such determination or pronouncement shall be made in writing on a form approved by the department. (Code 1981, § 31-7-16, enacted by Ga. L. 1996, p. 1243, § 1; Ga. L. 2009, p. 859, § 3/HB 509.)

31-7-17. Licensure and regulation of hospitals and related institutions transferred to Department of Community Health.

(a) Effective July 1, 2009, all matters relating to the licensure and regulation of hospitals and related institutions pursuant to this article shall be transferred from the Department of Human Resources (now known as the Department of Human Services) to the Department of Community Health.

(b) The Department of Community Health shall succeed to all rules, regulations, policies, procedures, and administrative orders of the Department of Human Resources that are in effect on June 30, 2009, or scheduled to go into effect on or after July 1, 2009, and which relate to the functions transferred to the Department of Community Health pursuant to this Code section and shall further succeed to any rights, privileges, entitlements, obligations, and duties of the Department of Human Resources that are in effect on June 30, 2009, which relate to the functions transferred to the Department of Community Health pursuant to this Code section. Such rules, regulations, policies, procedures, and administrative orders shall remain in effect until amended, repealed, superseded, or nullified by the Department of Community Health by proper authority or as otherwise provided by law.

(c) The rights, privileges, entitlements, and duties of parties to contracts, leases, agreements, and other transactions entered into before July 1, 2009, by the Department of Human Resources which relate to the functions transferred to the Department of Community Health pursuant to this Code section shall continue to exist; and none of these rights, privileges, entitlements, and duties are impaired or diminished by reason of the transfer of the functions to the Department of Community Health. In all such instances, the Department of Community Health shall be substituted for the Department of Human Resources, and the Department of Community Health shall succeed to the rights and duties under such contracts, leases, agreements, and other transactions.

(d) All persons employed by the Department of Human Resources in capacities which relate to the functions transferred to the Department

of Community Health pursuant to this Code section on June 30, 2009, shall, on July 1, 2009, become employees of the Department of Community Health in similar capacities, as determined by the commissioner of community health. Such employees shall be subject to the employment practices and policies of the Department of Community Health on and after July 1, 2009, but the compensation and benefits of such transferred employees shall not be reduced as a result of such transfer. Employees who are subject to the rules of the State Personnel Board and who are transferred to the department shall retain all existing rights under such rules. Retirement rights of such transferred employees existing under the Employees' Retirement System of Georgia or other public retirement systems on June 30, 2009, shall not be impaired or interrupted by the transfer of such employees and membership in any such retirement system shall continue in the same status possessed by the transferred employees on June 30, 2009. Accrued annual and sick leave possessed by said employees on June 30, 2009, shall be retained by said employees as employees of the Department of Community Health. (Code 1981, § 31-7-17, enacted by Ga. L. 2008, p. 12, § 2-14/SB 433; Ga. L. 2009, p. 453, § 1-28/HB 228; Ga. L. 2009, p. 745, § 2/SB 97; Ga. L. 2012, p. 446, § 2-37/HB 642.)

The 2012 amendment, effective July 1, 2012, in subsection (d), in the third sentence, deleted "and thereby under the State Personnel Administration" following "State Personnel Board" and substituted "under such rules" for "under the State Personnel Administration".

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2008, Code Section 31-7-17, as enacted by Ga. L. 2008, p. 520, § 1, was redesignated as Code Section 31-7-18.

Editor's notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General

Assembly, provides that: "Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."

31-7-18. Influenza vaccinations for discharged patients aged 65 and older; vaccinations or other measures for health care workers and other employees in hospitals; immunity from liability; standing orders.

(a) Prior to discharging any inpatient who is 65 years of age or older, a hospital shall offer the inpatient vaccinations for the influenza virus and pneumococcal disease in accordance with the recommendations of the Centers for Disease Control and Prevention and any applicable rules and regulations of the department, unless contraindicated and contingent on availability of such vaccine. A hospital may offer other patients such vaccinations in accordance with the recommendations of the Centers for Disease Control and Prevention and any applicable

rules and regulations of the department. The vaccinations may be administered pursuant to a standing order that has been approved by the hospital's medical staff.

(b) A hospital shall annually offer to its health care workers and other employees who have direct contact with patients, at no cost, vaccinations for the influenza virus in accordance with the recommendations of the Centers for Disease Control and Prevention, subject to availability of the vaccine. A hospital may offer to its health care workers and other employees any other vaccination, test, or prophylactic measure required or recommended by, and in accordance with the recommendations of, the Centers for Disease Control and Prevention. All such vaccinations, tests, or prophylactic measures may be offered or administered pursuant to standing orders approved by the hospital's medical staff to ensure the safety of employees, patients, visitors, and contractors.

(c) A hospital or health care provider acting in good faith and in accordance with generally accepted health care standards applicable to such hospital or health care provider shall not be subject to administrative, civil, or criminal liability or to discipline for unprofessional conduct for complying with the requirements of this Code section.

(d) Nothing in this Code section shall restrict or limit the use of standing orders in hospitals for any other lawful purpose. (Code 1981, § 31-7-18, enacted by Ga. L. 2008, p. 520, § 1/HB 1105; Ga. L. 2009, p. 184, § 2/HB 217; Ga. L. 2010, p. 529, § 1/HB 1179.)

The 2010 amendment, effective July 1, 2010, substituted the present provisions of subsection (b) for the former provisions, which read: "A hospital may offer to its health care workers any vaccination, test, or prophylactic measure required or recommended by, and in accordance with, the recommendations of the Centers for Disease Control and Prevention pursuant to standing orders approved by the hospi-

tal's medical staff to ensure the safety of employees, patients, visitors, and contractors."

Cross references. — Influenza vaccine protocol agreements, § 43-34-26.1.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2008, Code Section 31-7-17, as enacted by Ga. L. 2008, p. 520, § 1, was redesignated as Code Section 31-7-18.

ARTICLE 2

GEORGIA BUILDING AUTHORITY (HOSPITAL) RESERVED

31-7-20 through 31-7-40.

Repealed by Ga. L. 2008, p. 224, § 2/SB 130, effective July 1, 2008.

Editor's notes. — This article consisted of Code Sections 31-7-20 through 31-7-40, relating to the Georgia Building

Authority (Hospital), and was based on Ga. L. 1939, p. 144, §§ 1-17, 19; Ga. L. 1941, p. 250, §§ 1, 4; Ga. L. 1946, p. 56,

§ 1; Ga. L. 1951, p. 22, § 1; Ga. L. 1953, p. 357, § 1; Ga. L. 1960, p. 48, § 1; Ga. L. 1964, p. 95, §§ 1-3; Ga. L. 1964, p. 666, § 1; Ga. L. 1966, p. 302, § 1; Ga. L. 1967, p. 852, § 1; Ga. L. 1967, p. 860, §§ 1-4; Ga. L. 1967, p. 862, § 1; Ga. L. 1970, p. 159, § 1; Ga. L. 1972, p. 1015, § 417; Ga. L. 1983, p. 3, § 55; Ga. L. 1985, p. 149, § 31; Ga. L. 1988, p. 426, § 1; Ga. L. 1991, p. 94, § 31; Ga. L. 1993, p. 1402, § 18; Ga. L. 1996, p. 6, § 31; Ga. L. 2001, p. 4, § 31.

ARTICLE 3

GRANTS FOR CONSTRUCTION AND MODERNIZATION OF MEDICAL FACILITIES

JUDICIAL DECISIONS

Cited in *Brown v. Wright*, 231 Ga. 686, 203 S.E.2d 487 (1974).

31-7-50. Authorization of grants-in-aid.

The state is authorized to make grants to any county, municipality, or any combination thereof or to any hospital authority to assist in the construction and modernization of publicly owned and publicly operated medical facilities, auxiliary medical facilities, mental retardation centers, and mental health centers as defined in Code Section 31-7-51. The amount of the grant shall be determined in accordance with Code Sections 31-7-52 and 31-7-53. (Ga. L. 1949, p. 263, § 1; Ga. L. 1953, Jan.-Feb. Sess., p. 214, § 1; Ga. L. 1955, p. 410, § 1; Code 1933, § 88-2101, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1966, p. 716, § 1.)

31-7-51. Definitions.

(a) As used in this article, the term:

(1) "Auxiliary medical facilities" means diagnostic and treatment facilities, nursing homes, chronic illness hospitals, and rehabilitation centers.

(2) "Construction project" means a program for the construction of any medical facility or auxiliary medical facility, mental retardation center, or mental health center, as evidenced by the approval of a project under Title VI or Title VII, Public Health Service Act, as now or hereafter amended.

(3) "Hospital authority" means any hospital authority created under the "Hospital Authorities Law," Article 4 of this chapter, as now or hereafter amended.

(4) "Medical facilities" means general hospitals, psychiatric hospitals, nurse training facilities, tuberculosis hospitals, and public health centers.

(5) "Mental health center" means a facility providing services for the prevention or diagnosis of mental illness, or care and treatment of mentally ill patients, or rehabilitation of such persons, which services are provided principally for persons residing in a particular community or communities in or near which the facility is situated.

(6) "Mental retardation center" means a facility specially designed for the diagnosis, treatment, education, training, or custodial care of the mentally retarded, including facilities for training specialists and sheltered workshops for the mentally retarded but only if such workshops are part of the facilities which provide or will provide comprehensive services for the mentally retarded.

(7) "Modernization project" means the alteration, major repair, remodeling, replacement, and renovation of existing buildings (including original equipment thereof) and replacement of obsolete, built-in equipment of existing buildings, as evidenced by the approval of a project under Title VI or Title VII of the Public Health Service Act, as now or hereafter amended.

(8) "Publicly operated" means operated by a county, municipality, hospital authority, or any combination thereof.

(9) "Publicly owned" means that a county, municipality, hospital authority, or any combination thereof holds title to or has a long-term lease acceptable to the state agency on the property on which the construction or modernization is proposed.

(10) "State agency" means the State Health Planning and Development Agency or any successor designated as the agency of state government to administer the state construction and modernization plan and receive funds pursuant to Titles VI and VII of the Public Health Service Act, as amended.

(b) The terms "hospital," "psychiatric hospital," "nurse training facilities," "public health center," "rehabilitation facility," "nursing home," "chronic illness hospital," "long-term care facility," "mental retardation center," "mental health center," "construction," "cost of construction," "modernization," and "cost of modernization" shall have meanings consistent with those respectively ascribed to them in Titles VI and VII of the Public Health Service Act, as now or hereafter amended. (Code 1933, § 88-2102, enacted by Ga. L. 1966, p. 716, § 1; Ga. L. 1996, p. 6, § 31.)

U.S. Code. — Titles VI and VII of the Public Health Service Act, as amended, referred to in this Code section, are codified as 42 U.S.C. § 291 et seq. and 42 U.S.C. § 292a et seq., respectively.

JUDICIAL DECISIONS

Cited in Tift County Hosp. Auth. v. MRS of Tifton, Ga., Inc., 255 Ga. 164, 335 S.E.2d 546 (1985).

31-7-52. Amounts of grants for construction and modernization.

(a) Grants for construction projects or modernization projects made from state appropriations pursuant to this article shall be in an amount equal to one-third of the allowable cost of the project, except as otherwise provided in this article.

(b) In the event that state funds appropriated or otherwise made available during a given fiscal year for construction or modernization are not sufficient to match available federal funds, the state agency shall be empowered to:

(1) Reduce the percentage of contribution by the state below one-third of the allowable cost of the project in order to obtain the optimum amount of construction with funds available; and

(2) At its option, annually establish a ceiling which shall be the maximum amount that can be allotted to each or any medical facility project approved in the given fiscal year, provided that any ceiling so established shall not result in the allotment to a medical facility project of an amount greater than the one-third of allowable cost specified in subsection (a) of this Code section.

(c) The aggregate of federal and state funds granted to publicly owned and publicly operated construction or modernization projects shall be 66 $\frac{2}{3}$ percent unless state funds are inadequate to obtain optimum construction, in which event the state agency is authorized to establish an aggregate less than 66 $\frac{2}{3}$ percent.

(d) In the event an aggregate of federal and state funds is established at less than 66 $\frac{2}{3}$ percent, the state agency is authorized to establish a matching formula for any category of construction which is different from any other matching formula for any other category of construction; the state agency is further authorized to establish a matching formula for any category of modernization which is different from the matching formula for construction projects. (Ga. L. 1949, p. 263, § 1; Ga. L. 1953, Jan.-Feb. Sess., p. 214, § 1; Ga. L. 1955, p. 410, § 1; Code 1933, § 88-2103, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1966, p. 716, § 1; Ga. L. 1969, p. 715, §§ 4, 5.)

31-7-53. Matching formula; priority system; use of earnings; approval of federal grant.

(a) The state agency shall establish a matching formula for each construction and modernization category by fiscal year. Any change in

a matching formula shall apply in the same manner to each construction and modernization project within the category approved during the fiscal year.

(b) Grants made pursuant to this article shall be in accordance with the priority system as approved by the state agency and the United States secretary of health and human services.

(c) No part of the net earnings of publicly owned and publicly operated medical facilities, auxiliary medical facilities, mental retardation centers, and mental health centers constructed with the assistance of a grant under this article shall inure to the benefit of any private corporation or individual.

(d) Any grant made pursuant to this article shall be contingent upon the approval for that project of a federal grant approved by the United States secretary of health and human services under either Title VI or Title VII of the Public Health Service Act, as now or hereafter amended. (Ga. L. 1949, p. 263, § 1; Ga. L. 1953, Jan.-Feb. Sess., p. 214, § 1; Ga. L. 1955, p. 410, § 1; Code 1933, § 88-2105, enacted by Ga. L. 1964, p. 499, § 1; Code 1933, § 88-2104, enacted by Ga. L. 1966, p. 716, § 1; Ga. L. 1982, p. 3, § 31; Ga. L. 1992, p. 6, § 31.)

U.S. Code. — Titles VI and VII of the as 42 U.S.C. § 291 et seq. and 42 U.S.C. § 292a et seq., respectively. referred to in subsection (d), are codified

31-7-54. Manner of expenditure of construction funds.

In order to assist the several counties, municipalities, or any combination thereof or any hospital authorities created under the "Hospital Authorities Law," Article 4 of this chapter, such funds as are appropriated for each fiscal year for the construction of publicly owned and publicly operated medical facilities, auxiliary medical facilities, mental retardation centers, and mental health centers shall be expended in accordance with the provisions of this article. (Ga. L. 1949, p. 263, § 2; Ga. L. 1955, p. 410, § 2; Code 1933, § 88-2106, enacted by Ga. L. 1964, p. 499, § 1; Code 1933, § 88-2105, enacted by Ga. L. 1966, p. 716, § 1.)

31-7-55. Administration of state funds.

The state agency is to be the sole agency for the administration of state funds pursuant to this article. The administration of such funds shall be in direct conjunction with that of federal funds under Titles VI and VII of the Public Health Service Act, as now or hereafter amended. (Ga. L. 1949, p. 263, § 3; Ga. L. 1955, p. 410, § 3; Code 1933, § 88-2107, enacted by Ga. L. 1964, p. 499, § 1; Code 1933, § 88-2106, enacted by Ga. L. 1966, p. 716, § 1.)

U.S. Code. — Titles VI and VII of the Public Health Service Act, as amended, referred to in this Code section, are codified as 42 U.S.C. § 291 et seq. and 42 U.S.C. § 292a et seq., respectively.

31-7-56. Adherence to federal law and regulations.

The establishment of hospital service areas, the determination of relative need, the priority of projects, and the standards of construction shall be consistent with Titles VI and VII of the Public Health Service Act, as now or hereafter amended, and the federal regulations prescribed thereunder. (Ga. L. 1949, p. 263, § 5; Ga. L. 1955, p. 410, § 5; Code 1933, § 88-2108, enacted by Ga. L. 1964, p. 499, § 1; Code 1933, § 88-2107, enacted by Ga. L. 1966, p. 716, § 1.)

U.S. Code. — Titles VI and VII of the Public Health Service Act, as amended, referred to in this Code section, are codified as 42 U.S.C. § 291 et seq. and 42 U.S.C. § 292a et seq., respectively.

31-7-57. Procedure for grants to sponsors of construction projects; injunction of operation by transferee in violation of article.

(a) For each construction project, there shall be submitted to the state agency an application for state funds.

(b) Upon approving an application under this Code section, the state agency shall submit a budget request to the Office of Planning and Budget, based upon such application. Approval by the Office of Planning and Budget shall constitute an obligation of the state.

(c) Payments to the sponsor of a construction project shall be made in installments as construction progresses at intervals to be determined at the discretion of the state agency; and the state agency shall have the right to inspect and audit records and accounts of the sponsor as a condition precedent to making payments.

(d) If any publicly owned and publicly operated medical facility, auxiliary medical facility, mental retardation center, or mental health center for which funds have been paid under this Code section shall be leased to any corporation, person, organization, or body other than one eligible to receive a grant under this article or shall be sold or used for any purpose contrary to the provision under which the grant was made, at any time within 20 years after completion of construction, and such change in lease, sale, or use is not approved by the state agency, such agency may bring an equitable proceeding for writ of injunction against any person, firm, corporation, or organization operating in violation of this article. The proceedings shall be filed in the county in which such persons reside or, in the case of a firm or corporation, where such firm or corporation maintains its principal office; and, unless it is shown that

such person, firm, or corporation which has leased such medical facility, auxiliary medical facility, mental retardation center, or mental health center would have been eligible to accept the grant-in-aid from the state in the first instance and the lease has been approved by the state agency or the sale or use has been approved by such agency, the writ of injunction shall issue and such person, firm, or corporation shall be perpetually enjoined throughout the state from operating in violation of the provisions set out above. It shall not be necessary in order to obtain the equitable relief provided in this subsection that the state agency show that such person, firm, or corporation is ineligible nor to prove that there is no adequate remedy at law. In addition, the state agency shall be entitled to bring an action and recover from the transferor and transferee of any facility specified above such percentage of the value of the facility as the state grant bore toward the total construction cost of that facility as determined by agreement of the parties or by action brought in court. (Ga. L. 1949, p. 263, § 7; Ga. L. 1955, p. 410, § 6; Code 1933, § 88-2109, enacted by Ga. L. 1964, p. 499, § 1; Code 1933, § 88-2108, enacted by Ga. L. 1966, p. 716, § 1; Ga. L. 1985, p. 149, § 31.)

ARTICLE 4

COUNTY AND MUNICIPAL HOSPITAL AUTHORITIES

Cross references. — Use of excess proceeds of bonds issued by county or municipal corporation to match state and federal contributions to build and equip hospital in such county or municipal corporation, § 36-60-7.

Law reviews. — For article noting the exclusion of public authorities from the

Georgia Administrative Procedure Act, see 1 Ga. St. B.J. 269 (1965). For article surveying legislative and judicial developments in Georgia local government law for 1978-79, see 31 Mercer L. Rev. 155 (1979). For annual survey of local government law, see 38 Mercer L. Rev. 289 (1986).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Ga. L. 1941, p. 241, as amended, which was subsequently repealed but was succeeded by provisions in this article, are included in the annotations for this article.

Georgia Hospital Authorities Law, O.C.G.A. § 31-7-70 et seq., is constitutional. Cheely v. State, 251 Ga. 685, 309 S.E.2d 128 (1983).

Hospital authorities created under the law are local, not state, instrumentalities. Fulton-DeKalb Hosp. Auth. v. Gaither, 241 Ga. 572, 247 S.E.2d 89 (1978).

Hospital authority was a local, not state, instrumentality, and was not entitled to immunity under the Eleventh Amendment in a federal civil rights act suit brought by a paramedic against the authority. Baxter v. Fulton-DeKalb Hosp. Auth., 764 F. Supp. 1510 (N.D. Ga. 1991).

Hospital authority not within workers' compensation definition of "employer". — Local hospital authority is an instrumentality of the county and not of the state and, therefore, it is not covered by Workmen's (now Workers') Compensation Law under the law's definition of "employer" as a state instrumentality. Fulton-DeKalb Hosp. Auth. v.

Gaither, 241 Ga. 572, 247 S.E.2d 89 (1978).

Hospital authorities are subject to "open records" law. Cox Enters., Inc. v. Carroll City/County Hosp. Auth., 247 Ga. 39, 273 S.E.2d 841 (1981).

Hospitals operated by authorities are subject to examination by grand juries as facilities of county. Cox Enters., Inc. v. Carroll City/County Hosp. Auth., 247 Ga. 39, 273 S.E.2d 841 (1981).

Hospital authorities are exempt from sales and use taxes. Cox Enters., Inc. v. Carroll City/County Hosp. Auth., 247 Ga. 39, 273 S.E.2d 841 (1981).

Hospital authorities are exempt from Georgia Business Corporation Code. — Phrase "corporations engaged in any business" in Ga. L. 1975, p. 190, § 1 (see O.C.G.A. § 34-9-4) includes only those corporations governed by the Georgia Business Corporation Code (see O.C.G.A. Ch. 2, T. 14). Hospital authorities are not governed by the Georgia Business Corporation Code, but are expressly exempted therefrom. Fulton-DeKalb Hosp. Auth. v. Gaither, 241 Ga. 572, 247 S.E.2d 89 (1978).

Exemption from ad valorem taxation. — Hospital authority property is public property and, as such, is exempt from ad valorem taxation. Cox Enters., Inc. v. Carroll City/County Hosp. Auth., 247 Ga. 39, 273 S.E.2d 841 (1981).

Hospital authority cannot sue for libel. Cox Enters., Inc. v. Carroll City/County Hosp. Auth., 247 Ga. 39, 273 S.E.2d 841 (1981).

Hospital authorities subject to negligence suits by patients. — Hospital authority is subject to suit for damages resulting from personal injury the hospital negligently inflicts upon one of the hospital's patients or for the negligent

actions of the hospital's agents, servants, or employees. Hospital Auth. v. Shubert, 96 Ga. App. 222, 99 S.E.2d 708 (1957) (decided under former Ga. L. 1941, p. 241, as amended); but see Hall v. Hospital Auth., 93 Ga. App. 319, 91 S.E.2d 530 (1956).

Hospital authority is subject to suit for damages for personal injuries to patients resulting from negligence of the hospital's agents, servants, or employees. Hospital Auth. v. Misfeldt, 99 Ga. App. 702, 109 S.E.2d 816 (1959) (decided under former Ga. L. 1941, p. 241, as amended); but see Hall v. Hospital Auth., 93 Ga. App. 319, 91 S.E.2d 530 (1956).

Hospital authority not subject to tort suits. — State has right to delegate to public corporation the governmental right and duty which the state has to protect and preserve the health of the state's citizens; when the state properly does so the corporation maintaining and operating a hospital under such delegated authority, not for profit, is in the exercise of a governmental function and not subject to suit in a tort action. Hall v. Hospital Auth., 93 Ga. App. 319, 91 S.E.2d 530 (1956) (decided under former Ga. L. 1941, p. 241, as amended); but see Hospital Auth. v. Shubert, 96 Ga. App. 222, 99 S.E.2d 708 (1957); Hospital Auth. v. Misfeldt, 99 Ga. App. 702, 109 S.E.2d 816 (1959).

Hospital authorities established pursuant to the Hospital Authorities Law, O.C.G.A. § 31-7-70 et seq., are entitled to the defense of governmental immunity except to the extent there has been a waiver under the state constitution. Hospital Auth. v. Litterilla, 199 Ga. App. 345, 404 S.E.2d 796 (1991).

Cited in Medical Ctr. Hosp. Auth. v. Andrews, 162 Ga. App. 687, 292 S.E.2d 197 (1982).

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Hospital authority within definition of an operation for purely charitable purposes. — County hospital authority established and operated pursuant to provisions of the Hospital Authorities Law comes within definition

of an operation for purely charitable purposes. 1968 Op. Att'y Gen. No. 68-280.

Applicability of Fair Labor Standards Act to employees of hospital authorities. — Hospital authorities are subject to minimum wage and maximum

hours provisions of Fair Labor Standards Act, 29 U.S.C., with respect to employees employed in any hospital or related institution, school for physically or mentally handicapped or gifted children, or any institution of higher learning. 1965-66 Op. Att'y Gen. No. 66-249.

State has no jurisdiction over county hospital authority except state auditor prescribes forms for annual report. 1945-47 Op. Att'y Gen. p. 65.

County hospital authority is authorized to make term loans. 1969 Op. Att'y Gen. No. 69-9.

Authority may contract with private ambulance service for back-up service. — Hospital Authority may enter into contract with private ambulance service, on trip by trip basis, to provide for back-up ambulance service for the Authority. 1970 Op. Att'y Gen. No. 70-200.

Local government investment pool. — Hospital authorities created pursuant to O.C.G.A. Art. 4, Ch. 7, T. 31 are not eligible to participate in the local government investment pool created by O.C.G.A. § 36-83-8. 1982 Op. Att'y Gen. No. 82-78.

Authority to acquire or build dormitory-type facility for elderly. — Hospital authority is authorized under O.C.G.A. Art. 4, Ch. 7, T. 31 to acquire or build a dormitory-type facility for the elderly. 1984 Op. Att'y Gen. No. U84-9.

Construction with Residential Care Facilities for Elderly Authorities Act. — Hospital Authorities Law, O.C.G.A.

§ 31-7-70 et seq., and the Residential Care Facilities for the Elderly Authorities Act, O.C.G.A. § 31-7-110 et seq., should not be viewed as mutually exclusive and may be harmonized. 1984 Op. Att'y Gen. No. U84-9.

While both the Hospital Authorities Law, O.C.G.A. § 31-7-70 et seq., and the Residential Care Facilities for the Elderly Authorities Act, O.C.G.A. § 31-7-110 et seq., allow either authority to acquire or build a facility, a Residential Care Facilities for the Elderly Authority, as opposed to a Hospital Authority, may not operate a facility. 1984 Op. Att'y Gen. No. U84-9.

Disposition of surplus funds. — County hospital authority may remit surplus funds to the authority's participating units only in a manner acceptable to all parties and, in the alternative, may expend the authority's surplus funds in accord with the authority's permitted activities under the Hospital Authorities Law, O.C.G.A. § 31-7-70 et seq. 1987 Op. Att'y Gen. No. U87-19.

Hospital as "employer" under Peace Officer and Annuity Benefit Fund. — Hospital authority does not satisfy the statutory definition of an "employer" under the act governing the Peace Officer and Annuity Benefit Fund and, therefore, the authority's security personnel are not entitled to membership in that Fund. 1991 Op. Att'y Gen. No. U91-12.

31-7-70. Short title.

This article shall be known and may be cited as the "Hospital Authorities Law." (Code 1933, § 88-1801, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1996, p. 6, § 31.)

Administrative rules and regulations. — Rural Hospital Assistance Act, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Community Health, Health Planning, Chapter 111-2-4.

Law reviews. — For article, "Local Government Law," see 53 Mercer L. Rev. 389 (2001).

JUDICIAL DECISIONS

Ga. L. 1964, p. 499, § 1 repealed and superseded the 1941 Hospital Authorities Law. *Collins v. Nix*, 125 Ga. App. 520, 188 S.E.2d 235 (1972) (see O.C.G.A. § 31-7-70).

Members of authority boards cannot discharge duties by proxy. — Since such authorities as this section creates are in effect instrumentalities of the state discharging essential governmental obligations, it would be contrary to public interest to hold that members of boards of such authorities could discharge their solemn responsibilities by way of proxies; therefore, they must discharge them in person. *Collins v. Nix*, 125 Ga. App. 520, 188 S.E.2d 235 (1972) (see O.C.G.A. § 31-7-70 et seq.).

Punitive damages not allowed against authority. — It is against Georgia public policy to allow an award of punitive damages in a medical malpractice action against a hospital authority created as a governmental entity under the Hospital Authorities Act, O.C.G.A. § 31-7-70 et seq. *Hospital Auth. v. Martin*, 210 Ga. App. 893, 438 S.E.2d 103 (1993), aff'd, 264 Ga. 626, 449 S.E.2d 827 (1994).

Hospital authority's receipt of

funds from two counties in general support of an indigent treatment program did not divest the authority or the authority's hospital of their character as county agencies or instrumentalities so as to waive sovereign immunity. *Culberson v. Fulton-DeKalb Hosp. Auth.*, 201 Ga. App. 347, 411 S.E.2d 75, cert. denied, 201 Ga. App. 905, 411 S.E.2d 75 (1991).

ERISA preemption. — In a breach of contract case, defendants' Fed. R. Civ. P. 12(b)(6) motion to dismiss on the basis of Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. § 1001 et seq., preemption was denied because the insured's former employer, a hospital authority, was a government political subdivision, agency, or instrumentality for purposes of ERISA's governmental plan exemption; the hospital authority was created pursuant to the Georgia Hospital Authorities Act, O.C.G.A. § 31-7-70 et seq. *Williams-Mason v. Reliance Std. Life Ins. Co.*, No. CV206-124, 2006 U.S. Dist. LEXIS 40052 (S.D. Ga. June 16, 2006).

Cited in *Hospital Auth. v. Stewart*, 226 Ga. 530, 175 S.E.2d 857 (1970); *Daughtrey v. State*, 226 Ga. 758, 177 S.E.2d 670 (1970).

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Hospital authority may not own or operate a for profit business corporation. 1995 Op. Att'y Gen. No. U95-11.

Conflict of interest of hospital authority board member. — Member of a hospital authority board has an impermissible conflict of interest if the member has any financial interest, not de minimis, in an entity conducting business with the authority notwithstanding the existence

of an intermediary between the board and the entity. 1995 Op. Att'y Gen. No. U95-11.

Authority's right to operate and charge for ambulance service. — Hospital authority has right to operate ambulance service for transportation of patients to and from the authority's hospital and may make charges for such service. 1965-66 Op. Att'y Gen. No. 66-176.

RESEARCH REFERENCES

ALR. — Medical malpractice: negligent catheterization, 31 ALR5th 1.

31-7-71. Definitions.

As used in this article, the term:

(1) "Area of operation" means the area within the city or county activating an authority. Such term shall also mean any other city or county in which the authority wishes to operate, provided the governing authorities and the board of any hospital authorities of such city and county request or approve such operation.

(2) "Authority" or "hospital authority" means any public corporation created by this article.

(3) "Governing body" means the elected or duly appointed officials constituting the governing body of a city or county.

(4) "Participating units" or "participating subdivisions" means any two or more counties, or any two or more municipalities, or a combination of any county and any municipality acting together for the creation of an authority.

(5) "Project" includes the acquisition, construction, and equipping of hospitals, health care facilities, dormitories, office buildings, clinics, housing accommodations, nursing homes, rehabilitation centers, extended care facilities, and other public health facilities for the use of patients and officers and employees of any institution under the supervision and control of any hospital authority or leased by the hospital authority for operation by others to promote the public health needs of the community and all utilities and facilities deemed by the authority necessary or convenient for the efficient operation thereof. Such term may also include any such institutions, utilities, and facilities located outside the city or county in which the authority is located, provided that the acquisition, construction, equipping, and operation thereof is requested or approved by the governing bodies of such city and county in which the project is located and by the board of any hospital authorities located within such city and county or provided that the acquisition, construction, equipping, and operation is to be located in the area of operation of the authority.

(6) "Resolution" means the resolution or ordinance to be adopted by governing bodies pursuant to which authorities are established. (Ga. L. 1941, p. 241, § 2; Code 1933, § 88-1802, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1969, p. 103, § 1; Ga. L. 1972, p. 683, § 1; Ga. L. 1973, p. 190, § 1; Ga. L. 1991, p. 1391, §§ 1, 2.)

JUDICIAL DECISIONS

Authorized acts. — Whether the hospital authority authorized the purchase of the hospital without considering, among other factors, the anticompetitive adverse effect of the acquisition on healthcare in the community and alternatives to leasing the hospital to the defendants were irrel-

evant. The state put the ultimate say-so for the provision and management of healthcare in the hands of the healthcare authorities. *FTC v. Phoebe Putney Health Sys.*, 793 F. Supp. 2d 1356 (M.D. Ga. 2011), *aff'd*, 663 F.3d 1369 (11th Cir. 2011).

Antitrust actions. — In O.C.G.A. §§ 31-7-71 and 31-7-75, the Georgia legislature authorized hospital authorities (HA) power to acquire and lease hospitals to others, and must have anticipated that HA's could reduce competition, so state-action immunity applied to defendant HA's acquisition of a second hospital and the HA's lease to another defendant, an entity the HA created, and plaintiff Federal Trade Commission's complaint under 15 U.S.C. § 18 properly failed. *FTC v. Phoebe Putney Health Sys.*, 663 F.3d 1369 (11th Cir. 2011) (Unpublished).

Facilities need not necessarily be provided in hospital building or on the premises on which the hospital

building is located, but may be provided by contractual arrangements. *Richmond County Hosp. Auth. v. Richmond County*, 255 Ga. 183, 336 S.E.2d 562 (1985).

Office building used and operated as provided in this section is for a public purpose. *Petty v. Hospital Auth.*, 233 Ga. 109, 210 S.E.2d 317 (1974) (see O.C.G.A. § 31-7-71).

Cited in *Hospital Auth. v. Stewart*, 226 Ga. 530, 175 S.E.2d 857 (1970); *Griffin-Spalding County Hosp. Auth. v. Radio Station WKEU*, 240 Ga. 444, 241 S.E.2d 196 (1978); *Tift County Hosp. Auth. v. MRS of Tifton, Ga., Inc.*, 255 Ga. 164, 335 S.E.2d 546 (1985).

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"Project" includes renovation of hospital-type facilities. — Literally, a project which undertook to renovate a facility for the public health activities of a county health department would be a permitted activity of a hospital authority, but the enumeration of facilities in the definition of "project" may be read to imply the normal hospital and hospital-type facilities as opposed to the administrative type facility normally associated with a public health department. 1987 Op. Att'y Gen. No. U87-19.

County's agreement to subsidize hospital authority ambulance service. — Agreement by county with hospital authority in nature of contract in which county agrees to subsidize ambu-

lance service operated by hospital authority does not violate any provisions of state Constitution and county would be authorized to pay sums of money to hospital authority for this service. 1968 Op. Att'y Gen. No. 68-280.

Deposit of funds exceeding F.D.I.C. insurance. — Collecting officer or officer holding funds of hospital authority may deposit the funds in local bank or banks notwithstanding the fact that the amount so deposited may exceed the Federal Deposit Insurance Corporation insurance on account, if authority required depository to give bond or make deposit of securities in trust to secure such deposits, pursuant to former Code 1993, §§ 89-810 and 89-812. 1969 Op. Att'y Gen. No. 69-500.

31-7-72. Creation of hospital authority in each county and municipality.

(a) There is created in and for each county and municipal corporation of the state a public body corporate and politic to be known as the "hospital authority" of such county or city, which shall consist of a board of not less than five nor more than nine members to be appointed by the governing body of the county or municipal corporation of the area of operation for staggered terms as specified by resolution of the governing body. The number of members of any hospital authority as of March 1, 1984, may be increased by not more than two additional members by the adoption of a resolution of the members of the hospital authority, and such additional members shall be appointed through the same process used for filling vacancies which was in effect for such hospital

authority on January 1, 1984. Whenever an appointment to fill a vacancy on the board of any hospital authority is made, either for an unexpired term or a full term, consideration shall be given as to whether a licensed doctor of medicine or registered nurse currently serves on such authority. If no licensed doctor of medicine or registered nurse currently serves on such authority, then consideration shall be given to the nomination and choice of a licensed doctor of medicine or a registered nurse to fill such vacancy. No authority created under this Code section shall transact any business or exercise any powers under this Code section until the governing body of the area of operation shall, by proper resolution, declare that there is need for an authority to function in such county or municipal corporation. Copies of a resolution so adopted and any resolution adopted by the governing body providing for filling vacancies in the membership of the authority or making any changes in membership shall be filed with the department.

(b) Appointments to fill vacancies on the board of any hospital authority activated on or after March 15, 1964, for either an unexpired or full term as fixed in the original resolution or ordinance creating the authority, shall be made as follows:

(1) The governing body of the area of operation shall submit a list of three eligible persons to the board of the hospital authority;

(2) The board at its next regular meeting shall either select one of the three persons named in such list or decline to select any of the persons named in the list. If the board declines to select any of the persons named on the list, it shall so notify the governing body; and

(3) Upon receipt of notification that the board has declined to select any of the persons named in the governing body's list, the governing body shall submit a second list of three eligible persons, no one of whom was named on the first list, to the board of the hospital authority. The board at its next regular meeting after receipt of the second list shall select one of the three persons named in the second list.

(c) Appointments to fill vacancies for either an unexpired or full term on the boards of all hospital authorities in existence prior to March 15, 1964, shall be governed by the terms of a resolution adopted prescribing the manner by which vacancies are filled, unless changed by local legislation or constitutional amendment.

(d) Any two or more counties or any two or more municipalities or any county or municipality, or a combination of any county and any municipality, by a like resolution or ordinance of their respective governing bodies, may authorize the exercise of the powers provided for in this article by an authority. The membership of such authority affected by like resolutions of the respective governing bodies of any two

or more of the governing bodies of the participating units shall be not less than five nor more than 15 members, the terms and distribution of members between the participating units to be provided for by the resolutions adopted by the governing bodies of the participating units. The resolutions of the governing bodies of participating units acting together for the creation of an authority may be amended by the governing bodies of the participating units from time to time. Where the governing bodies of participating units have acted together for the creation of an authority under this subsection and where at least one of those participating units is a county having a population of 35,000 or less according to the United States decennial census of 1990 or any future such census, the method of filling vacancies upon such authority may be changed only by local Act of the General Assembly and, when so changed, shall be governed by that local Act.

(e)(1) Nothing in this Code section is intended to invalidate any of the acts of existing boards of authorities. Hospital authorities shall be granted the same exemptions and exclusions from taxes as are now granted to cities and counties for the operation of facilities similar to facilities to be operated by hospital authorities as provided for under this title.

(2) Notwithstanding the provisions of paragraph (1) of this subsection or any other law to the contrary, any real property in which 50 percent or more of the floor space thereof, excluding halls, corridors, and public spaces, is rented or leased by persons, firms, or corporations engaged in or conducting a private for profit business or profession owned by a hospital authority which is located in a county having a population of 50,000 or more according to the United States decennial census of 1990 or any future such census or owned by any subsidiary or affiliate thereof and which hospital authority or subsidiary or affiliate thereof operates a hospital containing more than 100 beds, shall be subject to all state, county, and municipal ad valorem taxes in the same manner as other private property.

(f) The project or projects of an authority created by two or more counties, or two or more municipalities, or a combination of any county and any municipality may be located outside of the area of the sponsor's operation when it is determined by the trustees that this will best serve the purposes of the facility and provided it is located within the area of service and within 12 miles of the hospital location or within 12 miles of the sponsoring county or municipality, whichever is farther.

(g) Hospital authorities created pursuant to this Code section shall have perpetual existence. (Ga. L. 1941, p. 241, §§ 3, 4; Ga. L. 1949, p. 1141, §§ 1, 2; Code 1933, § 88-1803, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1965, p. 347, § 1; Ga. L. 1978, p. 1974, § 1; Ga. L. 1984, p. 585, § 1; Ga. L. 1991, p. 94, § 31; Ga. L. 1994, p. 781, § 1; Ga. L. 1998, p. 900, § 3.)

Law reviews. — For review of 1998 legislation relating to insurance, see 15 Ga. St. U.L. Rev. 143 (1998).

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

APPOINTMENTS TO HOSPITAL AUTHORITY BOARDS

EXEMPTION FROM TAXATION

General Consideration

Construction of "resolution". — Resolution referred to in subsection (c) of O.C.G.A. § 31-7-72 is that of the hospital authority's board. *Brophy v. McCranie*, 264 Ga. 187, 442 S.E.2d 230 (1994).

State action immunity. — Hospital authority was an instrumentality, agency, or "political subdivision" of the state for purposes of the state action immunity doctrine and, thus, was immune from an antitrust action brought by a doctor who was denied staff privileges. *Crosby v. Hospital Auth.*, 93 F.3d 1515 (11th Cir. 1996), cert. denied, 520 U.S. 1116, 117 S. Ct. 1246, 137 L. Ed. 2d 328 (1997).

Cited in *Bradfield v. Hospital Auth.*, 226 Ga. 575, 176 S.E.2d 92 (1970); *Daughtrey v. State*, 226 Ga. 758, 177 S.E.2d 670 (1970); *Tanksley v. Foster*, 227 Ga. 158, 179 S.E.2d 257 (1971); *Collins v. Nix*, 125 Ga. App. 520, 188 S.E.2d 235 (1972); *Gaither v. Fulton-DeKalb Hosp. Auth.*, 144 Ga. App. 16, 240 S.E.2d 560 (1977); *Fulton-DeKalb Hosp. Auth. v. Gaither*, 241 Ga. 572, 247 S.E.2d 89 (1978); *Cox Enters., Inc. v. Carroll City/County Hosp. Auth.*, 247 Ga. 39, 273 S.E.2d 841 (1981); *United States v. Wingo*, 723 F. Supp. 798 (N.D. Ga. 1989).

Appointments to Hospital Authority Boards

Subsection (b) not subject to change by exercise of home rule provision of state Constitution. — Language providing for appointment of mem-

bers of boards of hospital authorities is not subject to change by exercise of home rule powers contained in Ga. Const. 1976, Art. IX, Sec. II, Para. I (see now Ga. Const. 1983, Art. IX, Sec. II, Para. I). *Commissioners of Wayne County v. Smith*, 240 Ga. 540, 242 S.E.2d 47 (1978).

Exemption From Taxation

Intent behind tax exemption for hospital authorities. — See *Undercofler v. Hospital Auth.*, 221 Ga. 501, 145 S.E.2d 487 (1965).

Tax exemption provision of O.C.G.A. § 31-7-72(e) not ambiguous. — There is no ambiguity in words "the same exemptions and exclusions from taxes as are now granted to cities and counties." *Undercofler v. Hospital Auth.*, 221 Ga. 501, 145 S.E.2d 487 (1965).

Subsection (e) of this section does not violate requirement of uniformity in taxation. *Blackmon v. Cobb County-Marietta Water Auth.*, 126 Ga. App. 459, 191 S.E.2d 128 (1972) (see O.C.G.A. § 31-7-72).

Tax exemption of subsection (e) not violative of Constitution. — Sentence whereby hospital authorities are given the same exemption from taxes as cities and counties are now granted does not offend Ga. Const. 1976, Art. III, Sec. VII, Para. IV (see now Ga. Const. 1983, Art. III, Sec. V, Para. III). It is germane to the subject matter stated in the caption and therefore conforms to the Constitution. *Undercofler v. Hospital Auth.*, 221 Ga. 501, 145 S.E.2d 487 (1965).

OPINIONS OF THE ATTORNEY GENERAL

Hospital authority not within provisions of Constitution authorizing

temporary loans. — County hospital authority is not either a county, municipal-

ity, political subdivision of the state authorized to levy taxes, or county board of education so as to come within provisions of Ga. Const. 1976, Art. IX, Sec. VII, Para. IV (see now Ga. Const. 1983, Art. IX, Sec. V, Para. V). 1969 Op. Att'y Gen. No. 69-9.

Governing bodies of counties or municipal corporations operating hospital authorities may, by resolution, change membership in hospital authority. 1970 Op. Att'y Gen. No. U70-217.

Selection of board members from subsequent list invalid prior to 1978 amendment. — When a hospital authority board elected by resolution to fill vacancies pursuant to this section as it existed prior to amendment in 1978 but rejected a list of three nominees and made its selection from a subsequent list, that appointment was invalid. 1980 Op. Att'y Gen. No. 80-12 (see O.C.G.A. § 31-7-72).

Authorities existing prior to March 15, 1964, may elect to continue filling vacancies as in past. — Action of board of hospital authority in existence prior to March 15, 1964, in electing by resolution to continue to fill vacancies thereon in the same manner as was done prior to approval of O.C.G.A. § 31-7-72 is valid, even though that resolution has not been filed with the governing authority. However, the hospital authority in question should file their previously adopted resolution

with the appropriate governing authority so as to enable the Hospital Authority to act as a de jure as opposed to a de facto body. 1981 Op. Att'y Gen. No. 81-89.

Hospital authorities are public authorities which may purchase goods manufactured by Correctional Industries Administration. 1970 Op. Att'y Gen. No. 70-88.

Hospital authority may deposit funds exceeding F.D.I.C. insurance if depository gives bond. — Collecting officer or officer holding funds of hospital authority may deposit those funds in local bank or banks notwithstanding the fact that the amount so deposited may exceed the Federal Deposit Insurance Corporation insurance on account, if authority requires depository to give bond or make deposit of securities in trust to secure such deposits, pursuant to former Code 1933, §§ 89-810 and 89-812. 1969 Op. Att'y Gen. No. 69-500.

Contract between hospital authority and member creates conflict of interest. — Conflict of interest exists when any member of a hospital authority, whether the member be a physician, attorney, architect, or member of any other profession, contracts with the authority to render professional services to the authority for or on behalf of the authority on a fee basis or for a stated stipend. 1983 Op. Att'y Gen. No. U83-5.

RESEARCH REFERENCES

C.J.S. — 41 C.J.S., Hospitals, § 7.

ALR. — Prospective use for tax-exempt

purposes as entitling property to tax exemption, 54 ALR3d 9.

31-7-72.1. Merger of hospital authorities.

(a) A hospital authority activated for a county pursuant to Code Section 31-7-73 may be merged with a hospital authority activated for that county under Code Section 31-7-72 upon compliance with this Code section and approval by resolution of the governing authority of the county in which the authorities are located. A majority of the board of each such hospital authority must approve such merger by a resolution which is adopted by each such board and is filed with the department. That resolution shall set forth:

(1) The name of each hospital authority planning to merge and the name of the surviving hospital authority into which each plans to merge; and

(2) The terms and conditions of the planned merger.

(b) The merger authorized by subsection (a) of this Code section shall not become effective until the governing authority of the county of operation of the merging hospitals appoints the members of the board of the surviving hospital authority by proper resolution and files copies of such resolution with the department. The governing authority is not required but is authorized to appoint as a member of the surviving hospital authority any member of a hospital authority planning to merge. The board of the surviving hospital shall consist of not more than 15 members with initial appointments for such staggered terms as provided in the resolution of the county governing authority. Appointments to fill vacancies for either an unexpired or full term shall thereafter be filled as authorized for an authority under subsection (c) of Code Section 31-7-72. The surviving hospital authority shall be in all other respects a hospital authority created under Code Section 31-7-72.

(c) A county whose hospital authorities have merged under the authority of this Code section shall not thereafter be prohibited from activating a hospital authority under Code Section 31-7-73.

(d) When a merger under this Code section takes effect:

(1) Each hospital authority party to the merger merges into the surviving hospital authority and the separate existence of each such hospital authority except the surviving hospital authority ceases;

(2) The ownership of and authority to operate the hospitals owned by each hospital authority and the title to all real estate and other property owned by each hospital authority party to the merger is vested in the surviving hospital authority without reversion or impairment subject to any and all conditions to which the property was subject prior to the merger;

(3) The surviving hospital authority has all liabilities and obligations of each hospital authority party to the merger; and

(4) A proceeding pending against any hospital authority party to the merger may be continued as if the merger did not occur or the surviving hospital authority may be substituted in the proceeding for the hospital authority whose existence ceased.

(e) It is declared by the General Assembly of Georgia that in the exercise of the power specifically granted to them by this Code section, hospital authorities are acting pursuant to state policy and shall be immune from antitrust liability to the same degree and extent as

enjoyed by the State of Georgia. (Code 1981, § 31-7-72.1, enacted by Ga. L. 1993, p. 1020, § 1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1993, a comma was deleted preceding “the title” in paragraph (d)(2).

JUDICIAL DECISIONS

Antitrust actions. — In O.C.G.A. §§ 31-7-71 and 31-7-75, the Georgia legislature authorized hospital authorities (HA) power to acquire and lease hospitals to others, and must have anticipated the HA could reduce competition, so state-action immunity applied to defendant HA’s acquisition of a second hospital and the HA’s lease to another defendant, an entity the HA created, and plaintiff Federal Trade Commission’s complaint

under 15 U.S.C. § 18 properly failed; the 1993 enactment of O.C.G.A. § 31-7-72.1 to the Hospital Authorities Law, stating that hospital mergers by HAs were immune from antitrust liability did not mean the original law was enacted without an anticipation of anticompetitive effects. *FTC v. Phoebe Putney Health Sys.*, 663 F.3d 1369 (11th Cir. 2011) (Unpublished).

31-7-73. Creation of additional hospital authority in counties with large populations.

(a) Any other provision of this article to the contrary notwithstanding, there is created in and for each county of this state having a population of 100,000 or more according to the United States decennial census of 1970 or any future such census a public body corporate and politic to be known as the “_____ Hospital Authority.” Each such hospital authority shall be a separate entity and in addition to the hospital authority of each county of this state created pursuant to Code Section 31-7-72.

(b) Each such additional hospital authority shall consist of a board of not less than five nor more than nine members to be appointed by the governing body of each such county for staggered terms, as specified by resolution of the governing body. No hospital authority created under this Code section shall transact any business or exercise any powers under this Code section until the governing body of each such county declares by proper resolution that there is a need for an additional hospital authority to function within such county, which resolution shall also determine and declare that such hospital authority is being created pursuant to this Code section and shall adopt a designation for the hospital authority so as to reflect that it is a separate and distinct entity from the hospital authority created pursuant to Code Section 31-7-72. A copy of such resolution shall be filed with the department. Copies of any resolutions adopted by the governing body of the county for the purpose of filling vacancies in the membership of the hospital authority or for making any changes in membership shall also be filed with the department.

(c) Appointments to fill vacancies on the board of any such hospital authority shall be made as provided in Code Section 31-7-72.

(d) All provisions of this article, including, but not limited to, the rights, powers, duties, obligations, and exemptions from taxation provided thereby for hospital authorities shall apply to the additional hospital authorities created pursuant to this Code section and the hospital authorities so created shall, in all respects, to the extent applicable for the purposes of this chapter, be treated as though they had been created pursuant to Code Section 31-7-72.

(e) It is declared that this Code section shall be cumulative of and supplemental to Code Section 31-7-72 and not in lieu thereof. It is expressly provided that nothing contained in this Code section shall invalidate or abrogate any of the actions or obligations of existing hospital authorities created pursuant to Code Section 31-7-72 and further that nothing contained in this Code section shall be construed as adversely affecting the rights and interests of the holders or owners of any bonds, certificates, or obligations now or hereafter issued by such existing hospital authorities. (Code 1933, § 88-1803.1, enacted by Ga. L. 1972, p. 683, § 2.)

JUDICIAL DECISIONS

Cited in *FTC v. Phoebe Putney Health Sys.*, 663 F.3d 1369 (11th Cir. 2011) (Unpublished).

RESEARCH REFERENCES

C.J.S. — 41 C.J.S., Hospitals, § 11 et seq. purposes as entitling property to tax exemption, 54 ALR3d 9.

ALR. — Prospective use for tax-exempt

31-7-74. Residency requirement; officers; compensation; rules and regulations.

The members of a hospital authority shall be residents of the participating units comprising the authority. The requirement of residence shall not apply to authorities activated under subsection (d) of Code Section 31-7-72, provided they are selected from within the area of service and within 12 miles of the hospital location or within 12 miles of the sponsoring county or municipality, whichever is farther. The members shall elect one of their number as chair and another as vice chair and shall also elect a secretary-treasurer, who need not be a member. The members shall receive no compensation for their services, either as members or as employees of the authority but may be reimbursed for their actual expenses incurred in the performance of their duties or, in the alternative, the members may elect to be

reimbursed for such expenses on a per diem basis in an amount not to exceed \$100.00 per meeting and the total amount not to exceed \$100.00 per month. The authority shall make rules and regulations for its governance and may delegate to one or more of its members, officers, agents, or employees such powers and duties as may be deemed necessary and proper. (Ga. L. 1941, p. 241, § 4; Code 1933, § 88-1804, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1965, p. 347, § 2; Ga. L. 1983, p. 1317, § 1; Ga. L. 1984, p. 874, § 1; Ga. L. 1997, p. 1404, § 2.)

JUDICIAL DECISIONS

Delegation of duty does not relieve authority of responsibility for negligence. —

Duty of screening candidates for admission to medical staff of hospital may be delegated to existing members of staff, and such staff members are agents of hospital authority, which is responsible for any default or negligence in properly selecting new members of staff. *Joiner v. Mitchell County Hosp. Auth.*, 125 Ga.

App. 1, 186 S.E.2d 307 (1971), *aff'd*, 229 Ga. 140, 189 S.E.2d 412 (1972).

Cited in *Cox Enters., Inc. v. Carroll City/County Hosp. Auth.*, 247 Ga. 39, 273 S.E.2d 841 (1981); *Georgia Magnetic Imaging, Inc. v. Green County Hosp. Auth.*, 219 Ga. App. 502, 466 S.E.2d 41 (1995); *Kendall v. Griffin-Spalding County Hosp. Auth.*, 242 Ga. App. 821, 531 S.E.2d 396 (2000).

31-7-74.1. Definitions; disclosures required; prohibited transactions; exceptions; sanctioning; sanctioning of members violating prohibition; authorization of authority to make stricter rules; preemption of other laws; applicability.

(a) As used in this Code section, the term:

(1) “Family” means spouse, child, or sibling.

(2) “Financial interest” means the direct or indirect ownership of any assets or stock of any business.

(3) “Substantial interest” means the direct or indirect ownership of more than 25 percent of the assets or stock of any business.

(4) “Transact business” or “transact any business” or “transaction” means any sale or lease of any personal property, real property, or services on behalf of oneself or on behalf of any third party as an agent, broker, dealer, or representative.

(b) Each member of a hospital authority shall disclose upon his or her selection as a member, and at least annually thereafter, the following described interests and relationships:

(1) Any financial interest held by the member or the member’s family, or held by an entity in which the member or the member’s family owns a financial interest, in any health care provider, any managed care provider or network, or any entity which sells products or services to the authority;

(2) Any position held by the member or the member's family as an officer, director, or employee of a hospital, hospital holding company, other health care provider, or managed care network; and

(3) Any contract which exists between the member or the member's family, or any entity in which the member or the member's family owns a financial interest, and the authority, including, but not limited to, supply contracts, service contracts, and leases.

(c) Except as otherwise provided in this Code section, no authority member, no hospital chief executive, and no hospital system chief executive officer shall, for such person or for any entity in which such person or such person's family has a substantial interest, transact any business with such authority.

(d) The prohibition of subsection (c) of this Code section shall not apply to:

(1) Any relationship whereunder a person licensed under Title 43 provides to such authority or its medical facilities any services;

(2) Any officer or employee of a trust company or bank which has been selected to be the depository of the funds of such nonprofit corporation; or

(3) Any transaction by a board member or a board member's family where the amount of all transactions between the parties is \$1,000.00 or less in any one year.

(e) A transaction in which any member of an authority has a financial interest or relationship described in subsection (b) of this Code section which does not constitute a substantial interest may be approved if, at the time of such approval:

(1) The material facts of the transaction and the member's financial interest are disclosed or known to the authority's board;

(2) The interested member is absent from any portion of a meeting which discusses or votes upon said transaction; and

(3) The members approving the transaction in good faith reasonably believe that the transaction is fair to the authority.

(f) Notwithstanding the provisions of subsection (c) of this Code section, a transaction in which any member of an authority has a substantial interest may be approved if:

(1) The transaction was submitted to a competitive process for requests for proposals, which includes but is not limited to consideration of all submitted proposals for price, quality, and appropriateness; and

(2) Notice of the transaction was published in the official county organ not less than two weeks prior to the approval of the board;

(3) Opportunity for public comment concerning the proposed transaction was provided at a meeting of the board;

(4) At the time of approval, the members approving the transaction in good faith reasonably believe that the transaction is fair and is in the best interests of the authority; and

(5) The interested member is absent from any portion of a meeting which discusses or votes upon said transaction.

(g) For purposes of this Code section, a transaction is authorized, approved, or ratified if it receives the affirmative vote of a majority of the members on the board present and voting who have no financial interest in the transaction. A majority, but not less than two, of all the noninterested members on the board present and voting constitutes a quorum for purposes of action that complies with this Code section.

(h) Any action by an authority which is taken in compliance with the applicable requirements of this Code section may not be enjoined, set aside, or give rise to an award of damages or other sanctions against the authority or any member or officer on the ground of a member's or officer's interest in such transaction. For any action by an authority not in compliance with such requirements, any member knowingly violating such requirements shall be immediately sanctioned, which may include, but not be limited to, reprimand, temporary suspension, or permanent removal from the authority after appropriate notice and hearing. The entity having appointed such member shall have the authority to impose any sanction.

(i) Nothing in this Code section shall prevent an authority from having stricter rules relating to interests or relationships than what is provided in this Code section.

(j) To the extent the provisions of this Code section conflict with the provisions of any other law, the provisions of this Code section shall govern.

(k) The provisions of this Code section shall apply to those individuals serving as members of an authority who are appointed or reappointed on or after July 1, 1997. However, this Code section shall apply to all members of an authority, regardless of appointment date, serving on or after July 1, 1998. (Code 1981, § 31-7-74.1, enacted by Ga. L. 1997, p. 1404, § 3.)

31-7-74.2. Oath to be taken by members of hospital authority.

Each member of a hospital authority shall take in the presence of an officer authorized to administer same the following oath:

I, _____, citizen of _____
_____ County, Georgia, do solemnly swear that I will, to the best of my ability, without favor or affection to any person and without any unauthorized financial gain or compensation to myself, faithfully and fairly discharge all of the duties and responsibilities that devolve upon me as a member of _____
Hospital Authority, during the term of my service as such member.
(Code 1981, § 31-7-74.2, enacted by Ga. L. 1997, p. 1404, § 3.)

31-7-74.3. Sale or lease by hospital authority; hearing required; factors to be considered at hearing; applicability; requirements for lease.

(a) No hospital which is owned by a hospital authority may be sold or leased to a for profit entity, a not for profit entity, or another hospital authority unless a public hearing regarding such action is held in the county where such hospital is located at least 60 days prior to such sale or lease becoming effective. In the event there is more than one participating unit for an authority, a hearing shall be held in each participating unit's county at least 60 days prior to the sale or lease becoming effective. The hospital authority must publish notice of the hearing at least three times, with the first such notice appearing at least 60 days prior to the hearing in the legal organ of each participating unit. At each such public hearing, the hospital authority shall describe, discuss, or otherwise disclose:

(1) The reasonably foreseeable adverse and beneficial effects of such lease or sale upon health care in the service area of the hospitals to be leased or sold, and, for purposes of this paragraph, the service area shall include the county in which the hospital is located and each adjoining county;

(2) A financial statement indicating the estimated value of the total assets and liabilities to be transferred or received in the transaction; however, if the value of any individual asset exceeds \$100,000.00, a description and the value of such assets shall be indicated on the financial statement; and

(3) The resumes of the top five executive officers who will manage the facility after it is sold or leased.

This subsection shall not apply to any transaction which is subject to the provisions of Code Section 31-7-89.1.

(b) No hospital which is owned by a hospital authority may be leased to another person, corporation, or business entity, other than as provided in paragraphs (23) and (24) of Code Section 31-7-75, unless such lease requires that:

(1) At least one member of the hospital authority will serve as a full voting member upon the governing body or local board of the business entity exercising control and management powers over the leased hospital; and

(2) The governing body or local board of the business entity exercising control and management powers over the leased hospital submits to the governing authority of each county in which the hospital is located, within 90 days after the close of the calendar year or that entity's fiscal year, a complete and detailed financial statement for that entity.

(c) Provisions of a lease required by subsection (b) of this Code section may not be renegotiated or otherwise altered or amended for the duration of such lease. (Code 1981, § 31-7-74.3, enacted by Ga. L. 1997, p. 1404, § 3; Ga. L. 1998, p. 128, § 31.)

31-7-75. Functions and powers.

Every hospital authority shall be deemed to exercise public and essential governmental functions and shall have all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this article, including, but without limiting the generality of the foregoing, the following powers:

(1) To sue and be sued;

(2) To have a seal and alter the same;

(3) To make and execute contracts and other instruments necessary to exercise the powers of the authority;

(4) To acquire by purchase, lease, or otherwise and to operate projects;

(5) To construct, reconstruct, improve, alter, and repair projects;

(6) To sell to others, or to lease to others for any number of years up to a maximum of 40 years, any lands, buildings, structures, or facilities constituting all or any part of any existing or hereafter established project. In the event a hospital authority undertakes to sell a hospital facility, such authority shall, prior to the execution of a contract of sale, provide reasonable public notice of such sale and provide for a public hearing to receive comments from the public concerning such sale. This power shall be unaffected by the language set forth in paragraph (13) of this Code section or any implications arising therefrom unless grants of assistance have been received by the authority with respect to such lands, buildings, structures, or facilities, in which case approval in writing as set forth in paragraph

(13) of this Code section shall be obtained prior to selling or leasing to others within 20 years after completion of construction;

(7) To lease for any number of years up to a maximum of 40 years for operation by others any project, provided that the authority shall have first determined that such lease will promote the public health needs of the community by making additional facilities available in the community or by lowering the cost of health care in the community and that the authority shall have retained sufficient control over any project so leased so as to ensure that the lessee will not in any event obtain more than a reasonable rate of return on its investment in the project, which reasonable rate of return, if and when realized by such lessee, shall not contravene in any way the mandate set forth in Code Section 31-7-77 specifying that no authority shall operate or construct any project for profit. Any lessee shall agree in the lease to pay rent sufficient in each year to pay the principal of and the interest on any revenue anticipation certificates proposed to be issued to finance the cost of the construction or acquisition of any such project and to pay off or refinance, in whole or in part, any outstanding debt or obligation of the lessee (including any redemption or prepayment premium due thereon) which was incurred in connection with the acquisition and construction of facilities of such lessee and the amount necessary in the opinion of the authority to be paid each year into any reserve funds which the authority may deem advisable to be established in connection with the retirement of the proposed revenue anticipation certificates and the maintenance of the project. Any such lease shall further provide that the cost of all insurance with respect to the project and the cost of maintenance and repair thereof shall be borne by the lessee. In carrying out a refinancing plan with regard to any outstanding debt or obligation of the lessee which was incurred in connection with the acquisition and construction of facilities of such lessee, the authority may use proceeds of any revenue anticipation certificates issued for such purpose to acquire such outstanding debt or obligation, in whole or in part, and may itself or through a fiduciary or agent hold and pledge such acquired debt or obligation as security for the payment of such revenue anticipation certificates. The powers granted in this paragraph shall be unaffected by the language set forth in paragraph (13) of this Code section or any implications arising therefrom unless grants of assistance have been received by the authority with respect to such project, in which case approval in writing as set forth in paragraph (13) of this Code section shall be obtained prior to leasing to others within 20 years after completion of construction. Any revenues derived by the authority from any such lease shall be applied by the authority to the payment of any revenue anticipation certificates issued in connection with the acquisition and construction of the

project and the payment, in whole or in part, of any outstanding debt or obligation of the lessee which was incurred in connection with the acquisition and construction of facilities of such lessee (including any redemption or prepayment premium due thereon) or to the payment of any other expenses incurred in connection with acquiring, financing, maintaining, expanding, operating, or equipping the project;

(8) To extend credit or make loans to others for the planning, design, construction, acquisition, or carrying out of any project, which credit or loans may be secured by such loan agreements, mortgages, security agreements, contracts, or other instruments or fees or charges, for a term not to exceed 40 years, and upon such terms and conditions as the authority shall determine reasonable in connection with such loans, including provisions for the establishment and maintenance of reserves and insurance funds, and in the exercise of powers granted by this Code section in connection with a project, to require the inclusion in any contract, loan agreement, security agreement, or other instrument such provisions for guaranty, insurance, construction, use, operation, maintenance, and financing of a project as the authority may deem necessary or desirable;

(9) To acquire, accept, or retain equitable interests, security interests, or other interests in any property, real or personal, by mortgage, assignment, security agreement, pledge, conveyance, contract, lien, loan agreement, or other consensual transfer in order to secure the repayment of any moneys loaned or credit extended by the authority;

(10) To establish rates and charges for the services and use of the facilities of the authority;

(11) To accept gifts, grants, or devises of any property;

(12) To acquire by the exercise of the right of eminent domain any property essential to the purposes of the authority;

(13) To sell or lease within 20 years after the completion of construction of properties or facilities operated by the hospital authority where grants of financial assistance have been received from federal or state governments, after such action has first been approved by the department in writing;

(14) To exchange, transfer, assign, pledge, mortgage, or dispose of any real or personal property or interest therein;

(15) To mortgage, pledge, or assign any revenue, income, tolls, charges, or fees received by the authority;

(16) To issue revenue anticipation certificates or other evidences of indebtedness for the purpose of providing funds to carry out the duties of the authority; provided, however, that the maturity of any such indebtedness shall not extend for more than 40 years;

- (17) To borrow money for any corporate purpose;
- (18) To appoint officers, agents, and employees;
- (19) To make use of any facilities afforded by the federal government or any agency or instrumentality thereof;
- (20) To receive, from the governing body of political subdivisions issuing the same, proceeds from the sale of general obligation bonds or other county obligations issued for hospital authority purposes;
- (21) To exercise any or all powers now or hereafter possessed by private corporations performing similar functions;
- (22) To make plans for unmet needs of their respective communities;
- (23) To contract for the management and operation of the project by a professional hospital or medical facilities consultant or management firm. Each such contract shall require the consultant or firm contracted with to post a suitable and sufficient bond;
- (24) To provide management, consulting, and operating services including, but not limited to, administrative, operational, personnel, and maintenance services to another hospital authority, hospital, health care facility, as said term is defined in Chapter 6 of this title, person, firm, corporation, or any other entity or any group or groups of the foregoing; to enter into contracts alone or in conjunction with others to provide such services without regard to the location of the parties to such transactions; to receive management, consulting, and operating services including, but not limited to, administrative, operational, personnel, and maintenance services from another such hospital authority, hospital, health care facility, person, firm, corporation, or any other entity or any group or groups of the foregoing; and to enter into contracts alone or in conjunction with others to receive such services without regard to the location of the parties to such transactions;
- (25) To provide financial assistance to individuals for the purpose of obtaining educational training in nursing or another health care field if such individuals are employed by, or are on an authorized leave of absence from, such authority or have committed to be employed by such authority upon completion of such educational training; to provide grants, scholarships, loans or other assistance to such individuals and to students and parents of students for programs of study in fields in which critical shortages exist in the authority's service area, whether or not they are employees of the authority; to provide for the assumption, purchase, or cancellation of repayment of any loans, together with interest and charges thereon, made for educational purposes to students, postgraduate trainees, or

the parents of such students or postgraduate trainees who have completed a program of study in a field in which critical shortages exist in the authority's service area; and to provide services and financial assistance to private not for profit organizations in the form of grants and loans, with or without interest and secured or unsecured at the discretion of such authority, for any purpose related to the provision of health or medical services or related social services to citizens;

(26) To exercise the same powers granted to joint authorities in subsection (f) of Code Section 31-7-72; and

(27) To form and operate, either directly or indirectly, one or more networks of hospitals, physicians, and other health care providers and to arrange for the provision of health care services through such networks; to contract, either directly or through such networks, with the Department of Community Health to provide services to Medicaid beneficiaries to provide health care services in an efficient and cost-effective manner on a prepaid, capitation, or other reimbursement basis; and to undertake other managed health care activities; provided, however, that for purposes of this paragraph only and notwithstanding the provisions of Code Section 33-3-3, as now or hereafter amended, a hospital authority shall be permitted to and shall comply with the requirements of Chapter 21 of Title 33 to the extent that such requirements apply to the activities undertaken by the hospital authority pursuant to this paragraph. No hospital authority, whether or not it exercises the powers authorized by this paragraph, shall be relieved of compliance with Article 4 of Chapter 18 of Title 50, relating to inspection of public records unless otherwise authorized by law. Any health care provider licensed under Chapter 30 of Title 43 shall be eligible to apply to become a participating provider under such a hospital plan or network which provides coverage for health care services which are within the lawful scope of his or her practice, provided that nothing contained in this Code section shall be construed to require any such hospital plan or network to provide coverage for any specific health care service. (Ga. L. 1941, p. 241, § 5; Ga. L. 1945, p. 349, § 1; Ga. L. 1957, p. 116, § 1; Code 1933, § 88-1805, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1964, Ex. Sess., p. 15, § 1; Ga. L. 1969, p. 103, § 2; Ga. L. 1969, p. 805, § 1; Ga. L. 1978, p. 1970, § 1; Ga. L. 1980, p. 1140, § 1; Ga. L. 1982, p. 712, §§ 1, 2; Ga. L. 1983, p. 3, § 22; Ga. L. 1983, p. 1566, § 2; Ga. L. 1990, p. 310, § 1; Ga. L. 1991, p. 1391, § 3; Ga. L. 1995, p. 901, § 1; Ga. L. 1999, p. 296, § 24; Ga. L. 2003, p. 569, § 2.)

Cross references. — Certificate of need required for offering of health care facilities and services, § 31-6-40.

to Code Section 28-9-5, in 2001, "not for profit" was substituted for "not-for-profit" in paragraph (25).

Code Commission notes. — Pursuant

Law reviews. — For survey article on

local government law, see 34 Mercer L. Rev. 225 (1982). For annual survey of local

government law, see 35 Mercer L. Rev. 233 (1983).

JUDICIAL DECISIONS

Hospital authorities have unlimited and unqualified right to sue and be sued, just as any private corporation. *Hipp v. Hospital Auth.*, 104 Ga. App. 174, 121 S.E.2d 273 (1961).

Hospital authorities are subject to suits for negligently inflicted injuries. — Phrase to sue and be sued subjects a hospital authority corporation to suits for damages for personal injuries the hospital negligently inflicts on one of the hospital's patients. *Hospital Auth. v. Shubert*, 96 Ga. App. 222, 99 S.E.2d 708 (1957).

Hospital authorities not entitled to sovereign immunity. — Hospital authorities, because the authorities are neither the state nor a department or agency of the state, are not entitled to the defense of sovereign immunity. *Thomas v. Hospital Auth.*, 264 Ga. 40, 440 S.E.2d 195 (1994); *Randolph County Hosp. Auth. v. Johnson*, 215 Ga. App. 283, 450 S.E.2d 318 (1994).

Attack by authority upon state statute on state constitutional grounds. — Hospital authority has standing by statute to attack state law on grounds that the law violates due process and equal protection clauses of Georgia Constitution. *Caldwell v. Hospital Auth.*, 248 Ga. 887, 287 S.E.2d 15 (1982).

Paragraph (1) not construed as waiver of sovereign immunity. — Ga. Const. 1983, Art. I, Sec. II, Para. IX does not require courts to construe the "sue and be sued" language of paragraph (1) of O.C.G.A. § 31-7-75 as a waiver of sovereign immunity. *Howard v. Liberty Mem. Hosp.*, 752 F. Supp. 1074 (S.D. Ga. 1990).

State action immunity. — Hospital authority was an instrumentality, agency, or "political subdivision" of the state for purposes of the state action immunity doctrine and, thus, was immune from an antitrust action brought by a doctor who was denied staff privileges. *Crosby v. Hospital Auth.*, 93 F.3d 1515 (11th Cir. 1996), cert. denied, 520 U.S. 1116, 117 S. Ct. 1246, 137 L. Ed. 2d 328 (1997).

In O.C.G.A. §§ 31-7-71 and 31-7-75, the Georgia legislature authorized hospital authorities (HA) power to acquire and lease hospitals to others, and must have anticipated that HA's could reduce competition, so state-action immunity applied to defendant HA's acquisition of a second hospital and the HA's lease to another defendant, an entity the HA created, and plaintiff Federal Trade Commission's complaint under 15 U.S.C. § 18 properly failed. *FTC v. Phoebe Putney Health Sys.*, 663 F.3d 1369 (11th Cir. 2011) (Unpublished).

Hospital was entitled to sovereign immunity for any judgment in a medical malpractice action in excess of the hospital's liability insurance. *Howard v. Liberty Mem. Hosp.*, 752 F. Supp. 1074 (S.D. Ga. 1990).

Discharge of governmental obligation to provide for health of people. — Under the Hospital Authorities Law, the governmental obligation to provide for the health of people can be discharged by acquisition of existing hospital facilities, by construction of completely new hospitals, and by sale or lease of hospital to others (as well as by the hospital authority's operation thereof). *Bradfield v. Hospital Auth.*, 226 Ga. 575, 176 S.E.2d 92 (1970).

Suitable private corporation could properly operate a hospital, either as lessee or as owner, so as to promote the public health functions of government. *Richmond County Hosp. Auth. v. Richmond County*, 255 Ga. 183, 336 S.E.2d 562 (1985).

Hospitals are intended to discharge identical governmental obligation. — Hospitals, whether owned directly by a county or city, or by an authority, are designed and intended to serve identical purposes of discharging the governmental obligation to provide for the health of the people. *Bradfield v. Hospital Auth.*, 226 Ga. 575, 176 S.E.2d 92 (1970).

Lease between related corporations. — Since corporations are separate

and distinct entities in the eyes of the law, notwithstanding even common ownership of two corporations and the relationship of one corporation as the wholly-owned subsidiary of another, the requirement that there be a lease to others is fully satisfied by a lease between two such related corporations. *Richmond County Hosp. Auth. v. Richmond County*, 255 Ga. 183, 336 S.E.2d 562 (1985).

Funding of project not for purely charitable purpose not unconstitutional. — Even assuming a purely charitable purpose is not involved in a project, the project's funding by a hospital authority does not violate Ga. Const. 1976, Art. IX, Sec. IV, Para. III (see now Ga. Const. 1983, Art. IX, Sec. II, Para. VIII), because a hospital authority is not a county, municipal corporation, or political subdivision of this state. *Bradfield v. Hospital Auth.*, 226 Ga. 575, 176 S.E.2d 92 (1970).

Language of O.C.G.A. § 31-7-75 does not require an "investment"; the language simply indicates that if an investment is made in connection with a lease, the rate of return will be limited to that which is reasonable. *Richmond County Hosp. Auth. v. Richmond County*, 255 Ga. 183, 336 S.E.2d 562 (1985).

Cash and accounts receivable are "personal property" under paragraph (14) of O.C.G.A. § 31-7-75. *Richmond County Hosp. Auth. v. Richmond County*, 255 Ga. 183, 336 S.E.2d 562 (1985).

Hospital authority members' action on corporations' boards did not breach their fiduciary duties or create a conflict of interest. *Richmond County Hosp. Auth. v. Richmond County*, 255 Ga. 183, 336 S.E.2d 562 (1985).

Hospital authority was engaging in ultra vires activity by renting and selling durable medical equipment to general public since there is no legislative authorization for such activity. *Tift County Hosp. Auth. v. MRS of Tifton, Ga., Inc.*, 255 Ga. 164, 335 S.E.2d 546 (1985).

Limitation on delegation of functions of hospital authority. — Hospital authority did not have the statutory authority to create a trust and delegate to the trust the power and discretion to carry

out the authority's functions, missions, and responsibilities. *Kendall v. Griffin-Spalding County Hosp. Auth.*, 242 Ga. App. 821, 531 S.E.2d 396 (2000).

Liability for punitive damages. — Under appropriate circumstances, a hospital authority may be held liable for punitive damages. *Hodges v. Effingham County Hosp. Auth.*, 182 Ga. App. 173, 355 S.E.2d 104 (1987).

Requirement that physician use hospital facilities and services is valid. — Hospital authority's resolution requiring a physician to use in-house facilities and services for hospital patients, where offered, does not invade a physician's province. Although the physician is required to use the facilities and equipment provided within the hospital complex for testing rather than similar facilities and equipment outside, the physician is nevertheless free to interpret the results of such tests and free to diagnose and prescribe treatment for all the physician's patients. *Cobb County-Kennestone Hosp. Auth. v. Prince*, 242 Ga. 139, 249 S.E.2d 581 (1978).

Hospital authority did not violate Clayton Act. — Whether the hospital authority authorized the purchase of the hospital without considering, among other factors, the anticompetitive adverse effect of the acquisition on healthcare in the community and alternatives to leasing the hospital to the defendants were irrelevant. The state put the ultimate say-so for the provision and management of healthcare in the hands of the healthcare authorities. *FTC v. Phoebe Putney Health Sys.*, 793 F. Supp. 2d 1356 (M.D. Ga. 2011), *aff'd*, 663 F.3d 1369 (11th Cir. 2011).

Cited in *Griffin-Spalding County Hosp. Auth. v. Radio Station WKEU*, 240 Ga. 444, 241 S.E.2d 196 (1978); *Cox Enters., Inc. v. Carroll City/County Hosp. Auth.*, 247 Ga. 39, 273 S.E.2d 841 (1981); *Medical Ctr. Hosp. Auth. v. Andrews*, 162 Ga. App. 687, 292 S.E.2d 197 (1982); *United States v. Wingo*, 723 F. Supp. 798 (N.D. Ga. 1989); *Colquitt County Hosp. Auth. v. Health Star, Inc.*, 262 Ga. 285, 417 S.E.2d 147 (1992).

OPINIONS OF THE ATTORNEY GENERAL

County hospital authority is authorized to make term loans. 1969 Op. Att'y Gen. No. 69-9.

Hospital authority can lease unimproved land to third party subject to prohibition against gratuities contained in Ga. Const. 1976, Art. III, Sec. VIII, Para. XII (see now Ga. Const. 1983, Art. III, Sec. VI, Para. VI). 1971 Op. Att'y Gen. No. 71-190.

Authority's right to operate and charge for ambulance service. — Hospital authority has right to operate ambulance service for transportation of patients to and from the authority's hospital and may make charges for such service. 1965-66 Op. Att'y Gen. No. 66-176.

Authority may contract with private ambulance service for back-up service. — Hospital authority may enter into contract with private ambulance service, on trip by trip basis, to provide for back-up ambulance service for the authority. 1970 Op. Att'y Gen. No. 70-200.

Agreement to subsidize hospital authority ambulance service not violative of state Constitution. — Agree-

ment by county with hospital authority in nature of contract in which county agrees to subsidize ambulance service operated by hospital authority does not violate any provisions of state Constitution and county would be authorized to pay sums of money to hospital authority for this service. 1968 Op. Att'y Gen. No. 68-280.

Unemployment compensation coverage for authority employees. — Inasmuch as creation and continued operation of a hospital authority is a joint venture of a hospital authority and the authority's supporting political subdivision or subdivisions, a determination as to whether the hospital authority's employees will be covered by unemployment compensation should be a joint determination made by both the hospital authority and the supporting political subdivision or subdivisions. 1971 Op. Att'y Gen. No. 71-55.

Open meetings and records provisions apply to hospital authorities. — Provisions for open meetings and records apply to hospital authorities. 1980 Op. Att'y Gen. No. U80-6.

RESEARCH REFERENCES

Am. Jur. 2d. — 40A Am. Jur. 2d, Hospitals and Asylums, § 8 et seq.

C.J.S. — 41 C.J.S., Hospitals, § 11 et seq.

ALR. — Hospital's liability for personal injury or death of doctor, nurse, or attendant, 1 ALR3d 1036.

31-7-75.1. Proceeds of sale of hospital held in trust to fund indigent hospital care.

(a) The proceeds from any sale or lease of a hospital owned by a hospital authority or political subdivision of this state, which proceeds shall not include funds required to pay off the bonded indebtedness of the sold hospital or any expense of the authority or political subdivision attributable to the sale or lease, shall be held by the authority or political subdivision in an irrevocable trust fund. Such proceeds in that fund may be invested in the same way that public moneys may be invested generally pursuant to general law, but money in that trust fund shall be used exclusively for funding the provision of hospital care for the indigent residents of the political subdivision which owned the hospital or by which the authority was activated or for which the authority was created. If the funds available for a political subdivision

in that irrevocable trust fund are less than \$100,000.00, the principal amount may be used to fund the provision of indigent hospital care; otherwise, only the income from that fund may be used for that care. Such funding or reimbursement for indigent care shall not exceed the diagnosis related group rate for that hospital in each individual case.

(b) In the event a hospital authority which sold or leased a hospital was activated by or created for more than one political subdivision or in the event a hospital having as owner more than one political subdivision is sold or leased by those political subdivisions, each such constituent political subdivision's portion of the irrevocable trust fund for indigent hospital care shall be determined by multiplying the amount of that fund by a figure having a numerator which is the population of that political subdivision and a denominator which is the combined population of all the political subdivisions which owned the hospital or by which or for which the authority was activated or created.

(c) For purposes of hospital care for the indigent under this Code section, the standard of indigency shall be that determined under Code Section 31-8-43, relating to standards of indigency for emergency care of pregnant women, based upon 125 percent of the federal poverty level.

(d) This Code section shall not apply to the following actions:

(1) A reorganization or restructuring;

(2) Any sale of a hospital, or the proceeds from that sale, made prior to April 2, 1986; and

(3) Any sale or lease of a hospital when the purchaser or lessee pledges, by written contract entered into concurrently with such purchase or lease, to provide an amount of hospital care equal to that which would have otherwise been available pursuant to subsections (a), (b), and (c) of this Code section for the indigent residents of the political subdivisions which owned the hospital, by which the hospital authority was activated, or for which the authority was created. However, the exception to this Code section provided by this paragraph shall only apply to:

(A) Hospital authorities that operate a licensed hospital pursuant to a lease from the county which created the appropriate authority; and

(B) Hospitals that have a bed capacity of more than 150 beds; and

(C) Hospitals located in a county in which no other medical-surgical licensed hospital is located; and

(D) Hospitals located in a county having a population of less than 45,000 according to the United States decennial census of 1990; and

(E) Hospitals operated by a hospital authority that entered into a lease-purchase agreement between such hospital and a private corporation prior to July 1, 1997. (Code 1981, § 31-7-75.1, enacted by Ga. L. 1986, p. 744, § 2; Ga. L. 1996, p. 739, § 1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1986, a hyphen was deleted from between “diagnosis” and “related” in the last sentence of subsection (a).

31-7-75.2. Exemption from disclosure for potentially commercially valuable plan, proposal, or strategy.

Notwithstanding any other provision of law to the contrary, no Georgia nonprofit corporation in its operation of a hospital or other medical facility for the benefit of a governmental entity in this state and no hospital authority shall be required by Chapter 14 of Title 50 or Article 4 of Chapter 18 of Title 50 to disclose or make public any potentially commercially valuable plan, proposal, or strategy that may be of competitive advantage in the operation of the corporation or authority or its medical facilities and which has not been made public. This exemption shall terminate at such time as such plan, proposal, or strategy has either been approved or rejected by the governing board of such corporation or hospital authority. Except as provided in this Code section or as otherwise provided by law, hospital authorities shall comply with the provisions of Chapter 14 of Title 50 and Article 4 of Chapter 18 of Title 50. (Code 1981, § 31-7-75.2, enacted by Ga. L. 1989, p. 553, § 1; Ga. L. 1993, p. 1020, § 2; Ga. L. 2001, p. 1172, § 1.)

Law reviews. — For note on 1989 enactment of this Code section, see 6 Ga. St. U.L. Rev. 324 (1989). For note on the 2001 amendment to this Code section, see 18 Ga. St. U.L. Rev. 162 (2001).

31-7-75.3. Home health agency services operated by hospitals.

Repealed by Ga. L. 2007, p. 47, § 31(1)/SB 103, effective May 11, 2007.

Editor’s notes. — This Code section was based on Code 1981, § 31-7-75.3, enacted by Ga. L. 1998, p. 900, § 4.

31-7-76. Procedure in event of failure of authority to perform minimum functions; determination of removal from office; appointments to fill vacancies created by removal.

(a) The General Assembly declares that it is the intent of this article to provide a mechanism for the operation and maintenance of needed health care facilities in the several counties and municipalities of this

state. It is the further intent of the General Assembly that, whenever an authority ceases to perform the minimum functions required for the continued operation and maintenance of needed health care facilities in the county or municipality, a procedure be made available to recognize the failure of the authority to perform these minimum functions and to provide for the orderly and responsible reorganization of the authority.

(b) Whenever it appears that an authority has ceased to perform the minimum functions required for the continued operation and maintenance of needed health care facilities in the county or municipality in which the authority is authorized to function, a petition may be filed in the superior court in the county requesting that the members of the authority be removed from office and that any vacancy created by a removal be filled as provided in Code Section 31-7-72 for the initial appointment of members of an authority. Each such petition shall be filed by one or more residents of the county in which the authority is authorized to function, or by the county governing authority, and shall be supported by petition of a number of residents of the county equal to 5 percent or more of the number of electors registered to vote in the general election last held in the county. In the case of an authority authorized to function solely within a municipality, the petition shall be filed by one or more residents of the municipality in which the authority is authorized to function, or by the municipal governing authority, and shall be supported by petition of a number of residents of the municipality equal to 5 percent or more of the number of electors registered to vote in the general election last held in the municipality.

(c) Upon the filing of any petition as provided in subsection (b) of this Code section, the judge of the superior court shall set a hearing to inquire into the merits of the petition not sooner than ten days nor later than 30 days from the date of filing of the petition. The hearing may be continued, in the discretion of the judge, on motion of any party.

(d) At each hearing held as provided in subsection (c) of this Code section, the judge, sitting without a jury, shall inquire into and determine the question of whether the authority has ceased to perform the minimum functions required for the continued operation and maintenance of needed health care facilities in the county or municipality. In making his determination the judge shall consider, but shall not be limited by, whether the authority has:

(1) Failed to establish and enforce rates and charges as provided in Code Section 31-7-77;

(2) Failed to take any reasonable action when the failure has the effect of jeopardizing repayment of principal or interest, when due, on revenue anticipation certificates issued by the authority;

(3) Failed to take any reasonable action when the failure has the effect of breaching a contract providing for continued maintenance

and use of the authority's facilities and entered into with a county or municipality as provided in Code Section 31-7-85;

(4) Failed to make plans for unmet needs of the community as authorized by paragraph (22) of Code Section 31-7-75;

(5) Failed to make and file its annual report as provided in Code Section 31-7-90;

(6) Failed to adopt an annual budget as provided in Code Section 31-7-90;

(7) Failed to conduct the annual audit as provided in Code Section 31-7-91;

(8) Failed to report or publish the annual audit as provided in Code Section 31-7-92;

(9) Failed to hold at least one meeting in the preceding calendar quarter; or

(10) Failed to take any other action required pursuant to this article.

(e) After giving all parties an opportunity to be heard, the judge shall determine, based on the evidence presented, whether the clear and convincing weight of the evidence is that the authority has ceased to perform the minimum functions required for the continued operation and maintenance of needed health care facilities in the county or municipality. In the event the judge so decides, he shall order the immediate removal from office of the members of the authority, except that no member shall be removed who demonstrates to the satisfaction of the judge his good faith attempt to fulfill his duties as a member of the authority. In the event the court denies the petition, the petition shall be dismissed.

(f) Vacancies created pursuant to this Code section shall be filled in the same manner as provided in Code Section 31-7-72 for the initial appointment of members of an authority. Vacancies created by the expiration of the term or the resignation or disability of a member appointed pursuant to this Code section shall be filled as provided in Code Section 31-7-72 for the filling of vacancies. (Code 1933, § 88-1804.1, enacted by Ga. L. 1978, p. 2009, § 1; Ga. L. 1984, p. 22, § 31.)

RESEARCH REFERENCES

Am. Jur. 2d. — 40A Am. Jur. 2d, Hospitals and Asylums, § 15.

C.J.S. — 41 C.J.S., Hospitals, §§ 7, 11, 12.

31-7-77. Rates and charges.

No authority shall operate or construct any project for profit. It shall fix rates and charges consistent with this declaration of policy and such as will produce revenues only in amounts sufficient, together with all other funds of the authority, to pay principal and interest on certificates and obligations of the authority, to provide for maintenance and operation of the project, and to create and maintain a reserve sufficient to meet principal and interest payments due on any certificates in any one year after the issuance thereof. The authority may provide reasonable reserves for the improvement, replacement, or expansion of its facilities or services. (Ga. L. 1941, p. 241, § 6; Code 1933, § 88-1806, enacted by Ga. L. 1964, p. 499, § 1.)

JUDICIAL DECISIONS

Cited in *Bradfield v. Hospital Auth., Enters., Inc. v. Carroll City/County Hosp.*
226 Ga. 575, 176 S.E.2d 92 (1970); *Cox Auth.*, 247 Ga. 39, 273 S.E.2d 841 (1981).

OPINIONS OF THE ATTORNEY GENERAL

Authority's right to operate and charge for ambulance service. — Hospital authority has right to operate ambulance service for transportation of patients to and from the authority's hospital and may make charges for such service. 1965-66 Op. Att'y Gen. No. 66-176.

RESEARCH REFERENCES

Am. Jur. 2d. — 40A Am. Jur. 2d, Hospitals and Asylums, § 3. **C.J.S.** — 41 C.J.S., Hospitals, § 21 et seq.

31-7-78. Issuance and sale of negotiable revenue anticipation certificates.

(a) Every authority is authorized to provide by resolution for the issuance and sale of negotiable revenue anticipation certificates for the purpose of:

(1) Paying all or any part of the cost of the acquisition, construction, alteration, repair, modernization, and other charges incident thereto in connection with any facilities or project;

(2) Paying all or any part of the cost of paying off or refinancing any outstanding debt or obligation of any nature owed by such authority or by persons who in furtherance of the authority's public purposes lease facilities from such authority pursuant to this article, provided that such outstanding debt or obligation was incurred in connection with the acquisition or construction of facilities of the authority or any such lessee; and

(3) Refunding outstanding certificates.

(b) In addition to paying from the proceeds of any revenue anticipation certificate issue interest accrued during the construction period of any project and other incidental and customary expenses such as those for engineering, inspections, and fiscal and legal services, the authority may fund as a part of such issue and set aside from the proceeds thereof an amount of money not exceeding 15 percent of the principal amount of such issue for the purpose of establishing a debt service reserve with respect to the principal and interest requirements of such issue. The authority may issue such types of certificates as it determines appropriate, including certificates on which principal and interest are payable:

(1) Exclusively from income or revenues of the operation of the authority financed with the proceeds of such certificates or together with such proceeds and grants from the federal government, or any instrumentality, or other person or corporation in aid of such projects;

(2) Exclusively from income and revenues of certain designated projects; or

(3) From revenues of the authority generally, including any debt service reserve established with a portion of the certificate proceeds.

Any such certificate may be additionally secured by the hypothecation of any revenues received from participating units or subdivisions and by mortgage of the project or any part thereof constituting real or personal property of the authority, except as prohibited by law. (Ga. L. 1941, p. 241, § 7; Ga. L. 1955, p. 618, § 1; Code 1933, § 88-1807, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1980, p. 1140, § 2.)

JUDICIAL DECISIONS

Cited in *Hospital Auth. v. Stewart*, 226 Ga. 530, 175 S.E.2d 857 (1970); *Cox Enters., Inc. v. Carroll City/County Hosp. Auth.*, 247 Ga. 39, 273 S.E.2d 841 (1981).

OPINIONS OF THE ATTORNEY GENERAL

County hospital authority is authorized to make term loans. 1969 Op. Att'y Gen. No. 69-9.

31-7-79. Liability on revenue certificates; tax exemption.

Neither the members of an authority nor any person executing certificates on behalf of an authority shall be personally liable thereon by reason of the issuance thereof. The certificates and other obligations of an authority shall not be, and shall so state on the face thereof, a debt of the city, the county, the state or any political subdivision thereof, or

any combination of subdivisions acting jointly as provided in this article. Certificates of any authority are declared to be issued for an essential public and governmental purpose and, together with interest thereon and income therefrom, shall be exempt from all taxes. (Ga. L. 1941, p. 241, § 7; Ga. L. 1955, p. 618, § 1; Code 1933, § 88-1808, enacted by Ga. L. 1964, p. 499, § 1.)

Law reviews. — For article, "Hospital Liability for Physician Negligence in Georgia: A Realistic Approach," see 37 Mercer L. Rev. 701 (1986).

JUDICIAL DECISIONS

Code section constitutional. — This section does not violate provisions of Ga. Const. 1976, Art. VII, Sec. III, Para. IV (see now Ga. Const. 1983, Art. VII, Sec. IV, Para. VIII) since revenue anticipation certificates issued by a hospital authority are not obligations or debts of the state, nor a pledge of the state's credit, but are a corporate debt of the authority. *Bradfield v. Hospital Auth.*, 226 Ga. 575, 176 S.E.2d 92 (1970) (see O.C.G.A. § 31-7-79).

Cited in *Cox Enters., Inc. v. Carroll City/County Hosp. Auth.*, 247 Ga. 39, 273 S.E.2d 841 (1981).

31-7-80. Form and contents of revenue certificates; validity of signatures thereon.

Certificates of an authority shall be authorized by its resolution and may be issued in one or more series and shall bear such date or dates; mature at such time or times; bear interest at such rate or rates not exceeding 9 percent per annum; be in such denomination or denominations; be in such form, either coupon or registered; carry such conversion or registration privileges; have such rank or priority; be executed in such manner; be payable in such medium of payment, at such place or places; and be subject to such terms of redemption, with or without premium, as such resolution, its trust indenture, or mortgage may provide. In the event that any of the members or officers of the authority whose signatures appear on any certificates or coupons shall cease to be such members or officers before the delivery of such certificates, such signatures shall nevertheless be valid and sufficient for all purposes. (Ga. L. 1941, p. 241, § 8; Ga. L. 1957, p. 485, § 1; Code 1933, § 88-1809, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1968, p. 1097, § 1; Ga. L. 1970, p. 144, § 1.)

Cross references. — Repeal of interest rate limitations, § 36-82-123.

31-7-81. Confirmation and validation of revenue certificates.

(a) Certificates of an authority shall be confirmed and validated in accordance with the procedure of Article 3 of Chapter 82 of Title 36; and, when validated, the judgment of validation shall be final and conclusive

with respect to such certificates and against the authority issuing the same.

(b) In the event that the payments to be made by any city or county, under contract entered into between the authority and the subdivision, are pledged to the security or payment of revenue certificates sought to be validated, the hospital authority, as an integral part of the validation proceedings, shall have a right of action against the contracting subdivision or subdivisions for a declaratory adjudication of the validity and binding effect of the contract, the actual controversy therein being whether or not the contract is in all respects valid and binding upon the subdivision or subdivisions. The subdivision or subdivisions shall be made a party or parties to the action, and it shall be incumbent on the subdivisions to defend against an adjudication of the validity of such contract or be forever bound. Notice of the proceedings shall be included in the notice of validation hearing required to be issued and published by the clerk of the superior court in which such validation proceeding is pending. Any citizen resident in any subdivision which is a party to the contract may intervene in the validation proceedings at or before the time set for the validation hearing by order of the superior court and assert any ground or objection to the validity and binding effect of the contract on his own behalf and on behalf of the subdivision and all citizens, residents, and property owners thereof. An adjudication as to the validity of the contract, unexcepted to within the time provided for exceptions in Article 3 of Chapter 82 of Title 36, shall be conclusive and binding upon the subdivision or subdivisions and the resident citizens and property owners thereof. (Ga. L. 1941, p. 241, § 12; Ga. L. 1955, p. 618, § 3; Code 1933, § 88-1810, enacted by Ga. L. 1964, p. 499, § 1.)

Cross references. — Venue for proceedings to confirm and validate revenue bonds issued by hospital authority, § 36-82-83.

JUDICIAL DECISIONS

Right of private citizen intervention does not create class action. — Statutory right, created in O.C.G.A. § 31-7-81(b), of private citizens to intervene in actions to validate and confirm hospital revenue anticipation certificates does not create a statutory class action. *Cheely v. State*, 165 Ga. App. 755, 302 S.E.2d 435 (1983).

31-7-82. Enforcement of rights of revenue certificate holders; procedure in event of default.

Obligations of an authority evidenced by certificates and trust indentures and mortgages executed in connection therewith may contain such provisions not inconsistent with law as shall be determined by the authority. The authority may in such instruments provide for pledging of all or any part of its gross or net fees, tolls, charges,

revenues, and incomes and for mortgaging of all or any part of its real or personal property and may covenant against pledging any or all of its income, revenues, tolls, charges, or fees; and the authority may further provide for the disposition of proceeds realized from the sale of any mutilated certificates and necessary provisions as to payment and redemption of such certificates. Undertakings of an authority may likewise prescribe the procedure by which certificate holders may enforce rights against the authority and provide for such rights upon breach of any covenant, condition, or obligation of the authority. Trust indentures, mortgages, or deeds to secure debt executed by an authority may provide that, in the event of default by the authority in the payment of principal and interest on certificates or obligations or breach of any covenant, a trustee or trustees appointed under the terms of the indenture, mortgage, or deed to secure debt, which shall be a bank or trust company authorized to exercise trust powers, may take possession of and use, operate, and manage any project mortgaged as security for the repayment of any indebtedness of the authority and provide the terms and conditions upon which the trustee or trustees or holders of certificates may enforce any right relating to such certificates. Such trust indentures, mortgages, and deeds to secure debt may contain such provisions, not inconsistent with law, as may be deemed necessary or desirable by the authority. (Ga. L. 1941, p. 241, § 9; Code 1933, § 88-1811, enacted by Ga. L. 1964, p. 499, § 1.)

31-7-83. Investment of surplus moneys and moneys received through issuance of revenue certificates.

Pending use for the purpose for which received, each hospital authority created by and under this article is authorized and empowered to invest all moneys or any part thereof received through the issuance and sale of revenue certificates of the authority in any securities which are legal investments or which are provided for in the trust indenture securing such certificates or other legal investments; provided, however, that such investments will be used at all times while held, or upon sale, for the purposes for which the money was originally received and no other. Contributions or gifts received by any authority shall be invested as provided by the terms of the contribution or gift or in the absence thereof as determined by the authority. (Ga. L. 1947, p. 1138, § 1; Code 1933, § 88-1820, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1969, p. 805, § 2.)

JUDICIAL DECISIONS

Cited in *Bradfield v. Hospital Auth.*,
226 Ga. 575, 176 S.E.2d 92 (1970).

OPINIONS OF THE ATTORNEY GENERAL

Deposits in state chartered banks are legal investments to extent insured by F.D.I.C. — Deposit of funds by hospital authority at interest in any chartered state bank is authorized legal investment to extent the deposits are insured by the Federal Deposit Insurance Corporation. 1969 Op. Att'y Gen. No. 69-500.

Authority may deposit funds exceeding F.D.I.C. insurance if depositor gives bond. — Collecting officer or

officer holding funds of hospital authority may deposit those funds in local bank or banks notwithstanding the fact that amount so deposited may exceed Federal Deposit Insurance Corporation insurance on account, if authority required depositor to give bond or make deposit of securities in trust to secure such deposits, pursuant to former Code 1933, §§ 89-810 and 89-812. 1969 Op. Att'y Gen. No. 69-500.

31-7-84. Payment for authority's services and facilities; levy of tax by political subdivisions; compliance by authority with county budgetary procedures.

(a) An authority shall have no power to tax, but upon the adoption of the resolution by the governing body or bodies of participating units or subdivisions as provided in this article and the execution of a contract for the use of facilities and services of the authority by political subdivisions or participating units as authorized in Code Section 31-7-85, provision shall be made annually by such participating units or political subdivisions contracting with an authority for the payment for the services and facilities of the authority used by the participating units or subdivisions or the residents thereof out of general funds of the participating units or subdivisions or out of tax revenues realized for the purpose of providing medical care or hospitalization for the indigent sick and others entitled to the use of the services and facilities of the authority.

(b) For the purpose of providing such tax revenues as specified above, there is authorized to be levied an ad valorem tax not exceeding seven mills, exclusive of all other taxes which may be levied by counties or by cities or by towns, from which revenues when realized there shall be appropriated annually sums sufficient to pay for the cost of the use of the services and facilities of authorities by participating subdivisions or the residents thereof pursuant to the provisions and covenants of the contract between such participating units and subdivisions and authorities. In determining the cost of such services and facilities furnished pursuant to such contract, there may be included, but without limiting same, the following:

(1) The cost of acquiring, constructing, altering, repairing, renovating, improving, and equipping projects; and

(2) Principal, interest, and sinking fund and other reserve requirements in connection with the issuance of revenue certificates, bonds,

or obligations by authorities to finance, in whole or in part, the cost of projects and the payment of expenses incident thereto; the cost of operating, maintaining, and repairing such projects; and the cost of retiring, refinancing, or refunding any outstanding debt or other obligation of any nature incurred by such authorities.

(c) Whenever the fiscal operations of any county falling within the classification of this chapter are governed by any statutory budget law applicable to the fiscal affairs and budget of such county, the governing authorities of such county shall have full power and authority hereunder to require the hospital authority to conform, in whole or in part, to the same budgetary procedures as are made binding by statute upon the county government itself. (Ga. L. 1941, p. 241, § 10; Ga. L. 1953, Jan.-Feb. Sess., p. 103, § 1; Ga. L. 1955, p. 618, § 2; Code 1933, § 88-1812, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1967, p. 552, § 1; Ga. L. 1968, p. 1098, § 1.)

JUDICIAL DECISIONS

<p>County authority may provide for funding of the operation and maintenance of a hospital during renovation, a reserve fund for hospital operations, payment of currently outstanding hospital authority obligations, and such amounts</p>	<p>as may be necessary to assure the continued operation and maintenance of the hospital during the term of the contract. <i>Cheely v. State</i>, 251 Ga. 685, 309 S.E.2d 128 (1983).</p>
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RESEARCH REFERENCES

<p>Am. Jur. 2d. — 40A Am. Jur. 2d, Hospitals and Asylums, § 8 et seq.</p>	<p>C.J.S. — 41 C.J.S., Hospitals, §§ 5 et seq., 11.</p>
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31-7-85. Contracts with political subdivisions.

(a) For the purpose of using such facilities, any city or county is authorized by action of its governing body to enter into contracts with an authority for such periods of time not exceeding 40 years as shall be necessary to provide for the continued maintenance and use of the facilities of an authority. Sums due and payable under such contract shall be determined from year to year during the period of such contract and no sums shall be paid for the services in excess of the amounts necessary to provide for the maintenance and operation of projects of authorities and such sums as shall be necessary to provide adequate and necessary facilities for medical care and hospitalization of the indigent sick, including reasonable reserves necessary for expansion and necessary for the payment of the cost of facilities of the projects, provided that any such contract may obligate a city or county or any combination thereof to pay for such services a fixed and definite minimum sum each year based or calculated upon the anticipated cost of such services including the cost and expense of making the facilities

of the authority available for the furnishing and performance of such services. The contracts authorized under this Code section to be entered into between cities or counties or any combination thereof and an authority may provide for the conveyance or lease of any existing hospital facilities or projects to an authority created by any such cities or counties for a nominal consideration only, provided that such conveyance shall contain a clause providing that, upon dissolution of the authority, such hospital facilities or projects shall revert to the city or county conveying the same to the authority and provided, further, that no property so conveyed may be mortgaged or in any way given as security for an indebtedness of the authority; this limitation is not to be construed as limiting the right of the authority to pledge or hypothecate revenues which may be realized by the authority from the operation of any property so conveyed to the authority.

(b) When, in accordance with this article, any county shall activate a hospital authority for such county and such authority shall acquire or construct or shall make preparations to acquire or construct a hospital in the county, any municipality in the county shall be authorized to contract with the hospital authority for the care in such hospital of indigent sick or injured persons who are residents of the municipality either on a per-patient-per-day basis or for a fixed amount of money payable at such time as the contracting parties may agree upon; and any such contract may, at the election of such municipality, be binding upon it for a period of not exceeding 40 years. Such contract and the amount to be received by the hospital authority thereunder may be pledged by the hospital authority as security for the payment of the principal and interest of any bonds or revenue anticipation certificates which it may issue in order to acquire or construct the hospital. (Ga. L. 1941, p. 241, § 10; Ga. L. 1953, Jan.-Feb. Sess., p. 103, § 1; Ga. L. 1955, p. 618, § 2; Code 1933, § 88-1813, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1964, Ex. Sess., p. 15, § 2.)

JUDICIAL DECISIONS

Promotion of public health constitutes public purpose for which powers of taxation can be exercised lawfully by state under Ga. Const. 1976, Art. VII, Sec. II, Para. I (see now Ga. Const. 1983, Art. VII, Sec. III, Para. I) and by counties under Ga. Const. 1976, Art. IX, Sec. V, Para. I (see now Ga. Const. 1983, Art. IX, Sec. IV, Para. I). *Bradfield v. Hospital Auth.*, 226 Ga. 575, 176 S.E.2d 92 (1970).

Provision of funds under general taxing power for care of indigents. — Under general taxing power, county can for purpose of public health provide the

county's indigent sick the funds with which to obtain treatment, even if not by contract with hospital. *Bradfield v. Hospital Auth.*, 226 Ga. 575, 176 S.E.2d 92 (1970).

General funds or special tax for care of indigents authorized. — County or county's cities or towns are authorized to provide for care for indigents by use of their general funds or by levying a special ad valorem tax for this purpose. *Bradfield v. Hospital Auth.*, 226 Ga. 575, 176 S.E.2d 92 (1970).

Use of public funds for treatment of

indigent patients in private hospital not unconstitutional. *Bradfield v. Hospital Auth.*, 226 Ga. 575, 176 S.E.2d 92 (1970).

County authority may provide for funding of the operation and maintenance of a hospital during renovation, a reserve fund for hospital operations, payment of currently outstanding hospital

authority obligations, and such amounts as may be necessary to assure the continued operation and maintenance of the hospital during the term of the contract. *Cheely v. State*, 251 Ga. 685, 309 S.E.2d 128 (1983).

Cited in *Cox Enters., Inc. v. Carroll City/County Hosp. Auth.*, 247 Ga. 39, 273 S.E.2d 841 (1981).

OPINIONS OF THE ATTORNEY GENERAL

Hospital authority not within provisions of Constitution authorizing temporary loans. — County hospital authority is not either a county, municipality, political subdivision of the state authorized to levy taxes, or county board of education so as to come within provisions of Ga. Const. 1976, Art. IX, Sec. VII, Para. IV (see now Ga. Const. 1983, Art. IX, Sec. V, Para. V). 1969 Op. Att'y Gen. No. 69-9.

Unemployment compensation coverage for authority employees. — In-

asmuch as creation and continued operation of a hospital authority is a joint venture of a hospital authority and the authority's supporting political subdivision or subdivisions, determination as to whether hospital authority's employees will be covered by unemployment compensation should be a joint determination made by both the hospital authority and the supporting political subdivision or subdivisions. 1971 Op. Att'y Gen. No. 71-55.

RESEARCH REFERENCES

Am. Jur. 2d. — 40A Am. Jur. 2d, Hospitals and Asylums, § 8 et seq.

C.J.S. — 41 C.J.S., Hospitals, §§ 5 et seq., 11.

31-7-86. Manner of operating property conveyed or leased to authority.

Any property conveyed or leased to an authority by cities or counties shall be operated by the authority to which the same is conveyed, together with other facilities of the authority, in accordance with this article and the resolution of the governing body or bodies or participating units. (Ga. L. 1941, p. 241, § 10; Ga. L. 1953, Jan.-Feb. Sess., p. 103, § 1; Ga. L. 1955, p. 618, § 2; Code 1933, § 88-1814, enacted by Ga. L. 1964, p. 499, § 1.)

JUDICIAL DECISIONS

Cited in *Richmond County Hosp. Auth. v. Richmond County*, 255 Ga. 183, 336 S.E.2d 562 (1985).

31-7-87. Hypothecation or mortgaging of purchased hospital facilities.

Should an authority acquire by purchase existing hospital facilities of political subdivisions and pay the reasonable value therefor, nothing in this article shall be construed to prevent the hypothecation or mortgaging of such facilities as security for the repayment of any indebtedness which may be legally incurred by such authority. (Ga. L. 1941, p. 241, § 10; Ga. L. 1953, Jan.-Feb. Sess., p. 103, § 1; Ga. L. 1955, p. 618, § 2; Code 1933, § 88-1815, enacted by Ga. L. 1964, p. 499, § 1.)

31-7-88. Payment of general obligations.

Obligations of an authority other than certificates shall be payable from general funds of an authority and shall at no time be a charge against any special fund allocated to the payment of certificates except upon payment of current annual maturities and reserves required to be created under Code Section 31-7-77. The maturity of any such obligations shall not extend for more than 40 years. (Ga. L. 1941, p. 241, § 11; Code 1933, § 88-1816, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1974, p. 424, § 1.)

31-7-89. Procedure for dissolution; disposition of property.

By joint action of the board of trustees of an authority and the governing bodies of participating units, authorities created under and pursuant to the terms of this article may be dissolved, provided that no such dissolution shall in any way impair the rights of third persons or the contracts of the authority with such third persons. Disposition to be made of the property of the authority upon dissolution shall be covered in any resolution adopted by the participating units and the board of trustees of the authority. At no time, however, shall any authority upon dissolution convey any of its property, except as may be otherwise authorized by law, to any private person, association, or corporation. (Ga. L. 1941, p. 241, § 13; Code 1933, § 88-1817, enacted by Ga. L. 1964, p. 499, § 1.)

JUDICIAL DECISIONS

Cited in *Cox Enters., Inc. v. Carroll City/County Hosp. Auth.*, 247 Ga. 39, 273 S.E.2d 841 (1981).

OPINIONS OF THE ATTORNEY GENERAL

Open meetings and records provisions apply to hospital authorities. —

Provisions for open meetings and records apply to hospital authorities. 1980 Op. Att'y Gen. No. U80-6.

Upstream of surplus to "participating unit." — It is implicit in the language

of O.C.G.A. § 31-7-89, and in the basic nature of the joint creation of an authority formed by two "participating units," that the authority may not upstream surplus to one participating unit without the concurrence of the other. 1987 Op. Att'y Gen. No. U87-19.

31-7-89.1. "Control" defined; sale or lease by hospital authority subject to requirements of Article 15 of this chapter.

(a) As used in this Code section, the term "control" means ownership of 50 percent or more of the assets of the entity in question or the ability to influence significantly the operations or decisions of the entity in question.

(b) The sale or lease of assets of a hospital owned or operated by a hospital authority to an individual, business corporation, general partnership, limited partnership, limited liability company, limited liability partnership, joint venture, nonprofit corporation, hospital authority, or any other for profit or not for profit entity shall be subject to the notice, hearing, certification, enforcement, and other requirements of Article 15 of this chapter which are applicable to dispositions of nonprofit hospitals to acquiring entities if the disposition of assets constitutes a sale or lease of 50 percent or more of the assets of a hospital having a permit under this chapter or constitutes a sale or lease which, when combined with one or more transfers between the same or related parties occurring within a period of five years, constitutes a sale or lease of 50 percent or more of the assets of a hospital having a permit under this chapter; provided, however, that the provisions of this Code section shall not apply to the restructuring of a hospital owned by a hospital authority involving a lease of assets to any not for profit or for profit entity which has a principal place of business located in the same county where the main campus of the hospital in question is located and which is not owned, in whole or in part, or controlled by any other for profit or not for profit entity whose principal place of business is located outside such county.

(c) Notwithstanding the provisions of subsection (b) of this Code section, the sale or lease of assets of a hospital owned or operated by a hospital authority to another hospital authority whose area of operation is a county contiguous to the county in which is located the hospital whose sale or lease is proposed shall not be subject to the requirements of Article 15 of this chapter.

(d) Notwithstanding any other provision of this article to the contrary, a hospital authority which is located in a county having a

population of 50,000 or fewer, according to the United States decennial census of 1990 or any future such census, may locate a project outside that hospital authority's area of operation if such location is in a county which is contiguous to the county of such hospital authority's area of operation. (Code 1981, § 31-7-89.1, enacted by Ga. L. 1997, p. 1091, § 2; Ga. L. 1999, p. 850, § 3.1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1997, "this chapter" was substituted for "Chapter 7 of Title 31" in subsection (b).

JUDICIAL DECISIONS

Cited in *Turpen v. Rabun County Bd. of Comm'rs*, 245 Ga. App. 190, 537 S.E.2d 435 (2000).

31-7-90. Annual report; budget.

The board of trustees of each authority created under this article shall file with the governing body or bodies of political subdivisions or participating units, on forms prescribed by the department, an annual report of the activities of the authority and shall annually consider and adopt as a part of such report a budget, which budget shall be filed with the annual report. The board of trustees may hold a public hearing on the budget, and representatives of any governing body within the area of operation of the authority or any other person having an interest in such budget shall have the right to be heard with respect to any matter covered by the report of the board of trustees or by the budget. (Ga. L. 1941, p. 241, § 14; Code 1933, § 88-1818, enacted by Ga. L. 1964, p. 499, § 1.)

31-7-90.1. Community benefit report; report disclosing member ownership in entities transacting business with authority.

(a) Each hospital authority created by and under this article shall annually prepare a community benefit report disclosing the cost of indigent and charity care provided by such authority for the preceding year not later than 90 days after the close of the fiscal or calendar year. Such report provided for in this Code section shall include a statement of the cost and type of indigent and charity care provided by the authority, including the number of indigent persons served, categorization of those persons by county of residence, as well as the cost of indigent and charity care provided in dollars. Such community benefit report shall be filed with the clerk of superior court of the county in which the authority's hospital is located, as well as with the governing body or bodies of such authority's participating units.

(b) Each hospital authority created by and under this article shall also annually prepare a report indicating any entity in which a member or member's family has a direct or indirect ownership of assets or stock constituting between 10 percent and 25 percent which transacted business with the authority during the previous year. Such report shall be filed with the clerk of superior court of the county in which the authority's hospital is located, as well as with the governing body or bodies of such authority's participating units. (Code 1981, § 31-7-90.1, enacted by Ga. L. 1997, p. 1404, § 4.)

Law reviews. — For article, "Putting Community Benefit' Standard," see 44 Ga. L. Rev. 375 (2010).

31-7-91. Required annual audit.

Each hospital authority created by and under this article shall ensure that an annual audit of the financial affairs, books, and records of such authority is conducted at the end of each fiscal year for the preceding year. Each hospital authority shall obtain either a certified public accountant or a firm of certified public accountants to conduct such audit. The auditor so appointed shall perform the audit in accordance with generally accepted accounting principles and shall submit a complete and final report and audit to the authority not later than 90 days after the close of the fiscal year. All audits provided for in this Code section shall be certified to and shall include, but in no way be limited to, a full and complete audit containing a balance sheet, profit and loss statement, and statement of receipts and disbursements. (Code 1933, § 88-1821, enacted by Ga. L. 1964, p. 499, § 1.)

JUDICIAL DECISIONS

Cited in *Bradfield v. Hospital Auth.*, 226 Ga. 575, 176 S.E.2d 92 (1970).

31-7-92. Filing of audits.

All final audits provided for in Code Section 31-7-91 shall be reproduced in sufficient number and copies of the audit shall be filed with the clerk of the superior court in the county where any hospital is operated by a hospital authority and in the office of the clerk of the superior court of any county that is a participating unit of the authority. In the event any hospital is operated by a municipal hospital authority, the audit required by this Code section to be filed with the office of the clerk of the superior court shall be filed in the office of city clerk, clerk of council, clerk of the board of aldermen, or clerk of the governing body of the municipality, in lieu of being filed with the clerk of the superior court. (Code 1933, § 88-1822, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1986, p. 489, § 1; Ga. L. 1991, p. 94, § 31.)

JUDICIAL DECISIONS

Cited in Bradfield v. Hospital Auth.,
226 Ga. 575, 176 S.E.2d 92 (1970).

OPINIONS OF THE ATTORNEY GENERAL

Open meetings and records provisions apply to hospital authorities. — apply to hospital authorities. 1980 Op. Att'y Gen. No. U80-6.
Provisions for open meetings and records

31-7-93. Failure to provide for audit.

In the event any hospital authority shall fail or refuse to provide for an annual audit and have such audit prepared and filed as set forth in Code Sections 31-7-91 and 31-7-92, any taxpayer of any participating unit of such authority or the governing authority of such unit may petition the superior court of the county wherein the authority operates a hospital to require the authority to have such audit prepared and filed as provided by the above Code sections. The judge of such court shall set a time for the hearing on such petition and after notice to the authority shall hear and determine the petition. If it is determined that the authority has failed to comply with the requirements for the preparation and filing of the audit, the judge shall pass such orders as are necessary to effectuate compliance with such requirements. In the event the authority fails to have an audit prepared and filed as required by court order, the members of the authority shall be subject to contempt proceedings by the court as provided by law. (Code 1933, § 88-1823, enacted by Ga. L. 1964, p. 499, § 1.)

JUDICIAL DECISIONS

Cited in Bradfield v. Hospital Auth.,
226 Ga. 575, 176 S.E.2d 92 (1970).

31-7-94. Grants to hospital authorities.

The state is authorized to make grants, as funds are available, to hospital authorities for public health purposes, provided that any funds so granted shall be distributed to and among the various public hospital authorities in the state in proportion to the number of hospital beds operated by each such hospital authority at the end of the calendar year preceding the grant. Funds shall be distributed to public hospitals operated by consolidated governments in the same manner as to authority hospitals prescribed in this Code section. Grants made by the state pursuant to this Code section shall be administered by the Department of Community Health in accordance with such rules, regulations, and procedures as it shall deem necessary for effective

administration of such grants. (Code 1933, § 88-1824, enacted by Ga. L. 1975, p. 777, § 1; Ga. L. 1985, p. 149, § 31; Ga. L. 2002, p. 1132, § 2.)

31-7-94.1. Short title; legislative findings; certification of rural hospitals for grant eligibility; rules and regulations.

(a) This Code section shall be known and may be cited as the “Rural Hospital Assistance Act.”

(b) The General Assembly finds that hospital authorities are created under Code Section 31-7-72 in and for each county and municipal corporation of the state in order to promote public health goals of the state. The General Assembly further finds that many hospitals in rural counties, whether or not they are owned or operated by hospital authorities, are in desperate financial straits. In order to preserve the availability of primary health care services provided by such hospitals to residents of rural counties, the General Assembly has determined that a program of state grants is necessary and recommends funds be made available to such hospitals. These grants will be conditioned upon those hospitals continuing to furnish essential health care services to residents in their areas of operation as well as engaging in the long-range planning and any restructuring which may be required for those hospitals to survive by devising cost-effective and efficient health care systems for meeting local health care needs.

(c) As used in this Code section, the term:

(1) “Department of Community Health” means the Department of Community Health created under Chapter 2 of this title.

(2) “Hospital” means an institution which has a permit as a hospital issued under this chapter.

(3) “Rural county” means a county having a population of less than 35,000 according to the United States decennial census of 1990 or any future such census; provided, however, that for counties which contain a military base or installation, the military personnel and their dependents living in such county shall be excluded from the total population of such county for purposes of this definition.

(4) “Rural hospital” means a hospital which has been certified by the Department of Community Health as:

(A) Being located in a rural county;

(B) Participating in both Medicaid and medicare and accepting both Medicaid and medicare patients;

(C) Providing health care services to indigent patients; and

(D) Maintaining a 24 hour emergency room.

(d) A rural hospital may apply for a grant available under subsection (e) of this Code section if it has been certified by the Department of Community Health as:

- (1) A rural hospital;
- (2) Having submitted a grant application which includes:
 - (A) A problem statement indicating the problem the rural hospital proposes to solve with the grant funds;
 - (B) The goals of the proposed solution;
 - (C) The organizational structure, financial system, and facilities that are essential to the proposed solution;
 - (D) The projected longevity of the proposed solution after the grant funds are expended;
 - (E) Evidence of collaboration with other community health care providers in achieving the proposed solution;
 - (F) Evidence that funds for the proposed solution are not available from another source;
 - (G) Evidence that the grant funds would assist in returning the hospital to an economically stable condition or that any plan for closure or realignment of services involves development of innovative alternatives for the discontinued services;
 - (H) Evidence of a satisfactory record-keeping system to account for grant fund expenditures within the rural county;
 - (I) A community health survival plan describing how the plan was developed, the goals of the plan, the links with existing health care providers under the plan, the implementation process including quantification of indicators of the hospital's financial well-being, measurable outcome targets, and the current condition of such hospital; and
 - (J) Such additional evidence as the Department of Community Health may require to demonstrate the feasibility of the proposed solution for which grant funds are sought.

(e) Notwithstanding the provisions of Code Section 31-7-94, the Department of Community Health is authorized to make grants to rural hospitals certified as meeting the requirements of subsection (d) of this Code section. Grants to rural hospitals owned or operated by hospital authorities may be for any of the following purposes:

- (1) Infrastructure development, including, without being limited to, facility renovation or equipment acquisition; provided, however, that the amount granted to any qualified hospital may not exceed the

expenditure thresholds that would constitute a new institutional health service requiring a certificate of need under Chapter 6 of this title and the grant award may be conditioned upon obtaining local matching funds;

(2) Strategic planning, including, without being limited to, strategies for personnel retention or recruitment, development of an emergency medical network, or the development of a collaborative and integrated health care delivery system with other health care providers, and the grant award may be conditioned upon obtaining local matching funds for items such as telemedicine, billing systems, and medical records. For the purposes of this paragraph, the maximum grant to any grantee shall be \$200,000.00;

(3) Nontraditional health care delivery systems, excluding operational funds and purposes for which grants may be made under paragraph (1) or (2) of this subsection. For the purposes of this paragraph, the maximum grant to any grantee shall be \$1.5 million; or

(4) The provision of 24 hour emergency room services open to the general public.

Any grants to certified rural hospitals which are not owned or operated by hospital authorities shall be limited to the purpose described in paragraph (4) of this subsection.

(f) In awarding grants under this Code section, the Department of Community Health may give priority to any otherwise eligible rural hospital which meets the definition of a “necessary provider” as specified in the state’s “Rural Healthcare Plan” of May, 1998.

(g) The Department of Community Health shall be authorized to certify rural hospitals as provided in subsection (d) of this Code section and shall adopt regulations to implement its powers and duties under this Code section. (Code 1981, § 31-7-94.1, enacted by Ga. L. 1999, p. 469, § 1; Ga. L. 2000, p. 136, § 31; Ga. L. 2002, p. 1132, § 3; Ga. L. 2006, p. 152, § 2D/HB 1178; Ga. L. 2009, p. 453, § 1-8/HB 228.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1999, throughout this Code section, “Department of Community Health” was substituted for “Health Planning Agency”, for “planning agency”, and for “Planning Agency”; “cost-effective” was substituted for “cost effective” in the last sentence of subsection (b); in subsection (c), former paragraphs (1) and (2) were redesignated as paragraphs (2) and (1), respectively, and a capitalization change was made in sub-

paragraph (c)(4)(B); “health care” was substituted for “healthcare” in subparagraph (d)(2)(I) and paragraph (e)(3); and a misspelling was corrected in paragraph (e)(1).

Pursuant to Code Section 28-9-5, in 2002, “subsection” was substituted for “Code section” at the end of the undesignated paragraph in subsection (e).

Law reviews. — For article on 2006 amendment of this Code section, see 23 Ga. St. U.L. Rev. 197 (2006).

31-7-95. Funding of medical education provided by hospital authorities and designated teaching hospitals.

(a) As used in this Code section, the term:

(1) "Designated teaching hospital" means a teaching hospital operated by other than a hospital authority, which hospital agrees to contract with the state to offer or continue to offer a residency program approved by the American Medical Association, which program has at least 50 residents and which hospital operates a 24 hour, seven-day-per-week emergency room open to the public and which hospital files a semiannual statistical report consistent with those filed by other state funded tertiary, neonatal, obstetrical centers with the Department of Community Health.

(2) "Hospital authority" means a hospital authority operating a teaching hospital which offers a residency program approved by the American Medical Association.

(3) "Resident" means a physician receiving medical education and training through a teaching hospital operated by a hospital authority or designated teaching hospital.

(b) The General Assembly finds that the major hospital authorities and designated teaching hospitals in this state provide a valuable service benefiting the entire state by operating teaching hospitals which provide necessary medical education and training for physicians; this service is provided through residency programs offered by these teaching hospitals. By the provision of residency programs operated by state teaching hospitals, the state has recognized its responsibility to fund the cost of training physicians; and it is the purpose of this Code section to recognize that the state has a similar responsibility when the medical education and training are provided by teaching hospitals operated by hospital authorities or by designated teaching hospitals.

(c) For each resident receiving medical education and training through a teaching hospital operated by a hospital authority or designated teaching hospital, the Department of Community Health shall pay no more than \$10,000.00 per annum to the hospital authority or designated teaching hospital. Such payments shall be made based upon certifications by the hospital authorities or designated teaching hospitals to the Department of Community Health. The Department of Community Health is authorized to designate the Georgia Board for Physician Workforce to promulgate rules and regulations specifying procedures for making the certifications provided for in this Code section and to establish a procedure for making payments to hospital authorities and designated teaching hospitals as provided in this Code section.

(d) The funds necessary to carry out this Code section shall derive from funds appropriated for such purpose to the Department of Community Health. In the event the funds appropriated by the General Assembly are insufficient to fund the full amount payable to hospital authorities or designated teaching hospitals under subsection (c) of this Code section, the amount otherwise payable thereunder shall be reduced pro rata in accordance with the funds actually appropriated for such purpose. The Department of Community Health shall have the authority to promulgate rules and regulations to carry out the provisions of this Code section. No additional teaching hospitals will be added until such funds have been made available for any additional teaching hospitals.

(e) Nothing in this Code section shall be construed to amend, modify, supersede, or repeal Chapter 10 of Title 49. (Code 1933, § 88-1825, enacted by Ga. L. 1980, p. 1040, § 1; Ga. L. 1984, p. 585, § 2; Ga. L. 1991, p. 94, § 31; Ga. L. 1998, p. 193, § 1; Ga. L. 2000, p. 1421, § 1; Ga. L. 2009, p. 453, § 1-29/HB 228.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1985, paragraphs (a)(1), (a)(1), and (a)(2) were redesignated as paragraphs (a)(1), (a)(2), and (a)(3); a hyphen was deleted between “state” and “funded” in the present paragraph (a)(1); and “hospital” was substituted for “hospitals” in the last sentence of subsection (c).

Pursuant to Code Section 28-9-5, in

1998, the name of the Joint Advisory Board of Family Practice was changed to the Georgia Board for Physician Workforce in the second sentence of subsection (c).

Administrative rules and regulations. — Residency Capitation, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Board for Physician Workforce, Chapter 195-2.

JUDICIAL DECISIONS

Cited in *Wilson v. Board of Regents*, 246 Ga. 649, 272 S.E.2d 496 (1980).

31-7-96. Construction of article.

This article, being necessary for the welfare of the citizens of the state, shall be liberally construed to effect the purposes hereof; and insofar as this article may be inconsistent with any other law, whether by charter of any political subdivision of the state or otherwise, this article shall be controlling. (Ga. L. 1941, p. 241, § 16; Code 1933, § 88-1819, enacted by Ga. L. 1964, p. 499, § 1.)

Cross references. — Revenue bonds generally, § 36-82-60 et seq.

JUDICIAL DECISIONS

Cited in Tift County Hosp. Auth. v. MRS of Tifton, Ga., Inc., 255 Ga. 164, 335 S.E.2d 546 (1985); Kendall v.

Griffin-Spalding County Hosp. Auth., 242 Ga. App. 821, 531 S.E.2d 396 (2000).

OPINIONS OF THE ATTORNEY GENERAL

Authority may authorize contract for private back-up ambulance service. — Hospital authority may enter into contract with private ambulance service,

on trip by trip basis, to provide for a back-up ambulance service for authority. 1970 Op. Att'y Gen. No. 70-200.

ARTICLE 5

RESIDENTIAL CARE FACILITIES FOR THE ELDERLY AUTHORITIES

Cross references. — Protection of disabled adults and elder persons, T. 30, C. 5. Licensing of nursing home administrators, T. 43, C. 27. Exemptions from law regarding public officials' conflicts of interest relating to Medicaid and Medicare payments, § 45-10-25. Provision by Department of Human Resources (now the Department of Community Health for these purposes) of adult day center services for the aging, T. 49, C. 6.

Administrative rules and regulations. — Nursing homes, Official Compi-

lation of the Rules and Regulations of the State of Georgia, Department of Human Resources, Public Health, Chapter 290-5-8.

Law reviews. — For article, "Tax-exempt Financing of Housing for the Elderly in Georgia," see 17 Ga. St. B.J. 41 (1980).

For note, procedural requirements for public approval of tax-exempt industrial development bonds under TEFRA, 19 Ga. St. B.J. 84 (1982).

OPINIONS OF THE ATTORNEY GENERAL

Construction with Hospital Authorities Law. — The Hospital Authorities Law, O.C.G.A. § 31-7-70 et seq., and the Residential Care Facilities for the Elderly Authorities Act, O.C.G.A. § 31-7-110 et seq., should not be viewed as mutually exclusive and may be harmonized. 1984 Op. Att'y Gen. No. U84-9.

While both the Hospital Authorities

Law, O.C.G.A. § 31-7-70 et seq., and the Residential Care Facilities for the Elderly Authorities Act, O.C.G.A. § 31-7-110 et seq., allow either authority to acquire or build a facility, a Residential Care Facilities for the Elderly Authority, as opposed to a Hospital Authority, may not operate a facility. 1984 Op. Att'y Gen. No. U84-9.

31-7-110. Short title.

This article shall be known and may be cited as the "Residential Care Facilities for the Elderly Authorities Act." (Ga. L. 1980, p. 1466, § 1.)

31-7-111. Findings; declaration of policy.

(a) It is found, determined, and declared that:

(1) There exists in this state a seriously inadequate supply of and a critical need for facilities which can furnish the comprehensive services required by elderly persons in a single location, including, without limitation, residential care and the types of services provided in skilled nursing homes, intermediate care homes, assisted living communities, and personal care homes (hereinafter referred to as “residential care facilities for the elderly”);

(2) The aforesaid shortage of residential care facilities for the elderly is threatening to the safety, health, convenience, and welfare of certain elderly citizens; and

(3) An adequate supply of residential care facilities for the elderly to provide the special facilities and services needed by elderly persons cannot be provided through the ordinary operation of private enterprise, and therefore the involvement of a public agency, as is contemplated in this article, in such an undertaking would not be competitive with private enterprise.

Accordingly, it is determined that it is a valid public purpose, as a matter of public health, safety, convenience, and welfare, to assist in providing residential care facilities for the elderly.

(b) It is further found and declared that the creation of the authorities, as provided in this article, in the cities and counties of this state and the carrying out by such authorities of the corporate powers conferred in this article in connection with providing an adequate supply of residential care facilities for the elderly are in all respects for the benefit of the people of this state and a public purpose within the meaning of the Constitution of Georgia in that:

(1) Providing an adequate supply of residential care facilities for the elderly for the people of this state is necessary to the public health and welfare; and

(2) The development and stimulation of trade and commerce in this state is vital to the public welfare, creates employment opportunities, and lessens unemployment and underemployment. (Ga. L. 1980, p. 1466, § 2; Ga. L. 2011, p. 227, § 14/SB 178.)

The 2011 amendment, effective July 1, 2011, inserted “assisted living communities,” near the end of paragraph (a)(1).

31-7-112. Definitions.

As used in this article, the term:

(1) “Authority” means each public corporation created pursuant to this article.

(2) "Cost of project" includes:

(A) All costs of construction, purchase, or other form of acquisition;

(B) All costs of real or personal property required for the purposes of the project and of all facilities related thereto and the cost of extinguishing any liens or security interests related to the property so acquired, including land and any rights or undivided interest therein; easements, franchises, water rights, fees, permits, approvals, licenses, and certificates; the securing of such franchises, permits, approvals, licenses, and certificates; and the preparation of applications therefor;

(C) Costs of all machinery, equipment, initial fuel, and other supplies required for the project;

(D) Financing charges, interest prior to and during construction and for six months thereafter;

(E) Costs of engineering, architectural, and legal services;

(F) Fees paid to fiscal agents for financial and other advice or supervision;

(G) Costs of plans and specifications and all expenses necessary or incidental to the construction, purchase, or acquisition of the project or to determining the feasibility or practicability of the project; and

(H) Administrative expenses and such other expenses as may be necessary or incidental to the financing authorized in this article.

There may also be included, as part of the cost of a project, the repayment of any loans made for the advance payment of any part of such cost, including interest thereon at rates to be determined by the authority, which loans are authorized if made payable solely from the proceeds of the authority's bonds or notes or revenues to be received in connection with the leasing, sale, or financing of the project. The cost of a project may also include a fund or funds for the creation of a debt service reserve, a renewal and replacement reserve, and such other reserves as may be reasonably required by the authority with respect to the financing and operation of any project and as may be authorized by any bond resolution or trust agreement or indenture pursuant to the provisions of which the issuance of any such bonds may be authorized. Any obligation or expense incurred for any of the foregoing purposes shall be paid or reimbursed as a part of the cost of the project out of the proceeds of revenue bonds or notes issued under this article.

(3) "County" means any county of this state.

(4) "Eligible persons" means persons who have reached the age of 62 years and who have need for housing which provides the special facilities and services required by elderly persons and who meet the criteria for eligibility set forth in rules and regulations which are from time to time promulgated by the authority pursuant to the grant of authority so to do which is contained in subsection (b) of Code Section 31-7-114.

(5) "Governing body" means the elected or duly appointed officials constituting the governing body of each municipal corporation and county in this state.

(6) "Municipal corporation" means each city and town in this state.

(7) "Project" or "residential care facility for the elderly" means:

(A) Any one or more buildings or structures to be used in providing at a single location the comprehensive services required by the elderly, including, without limitation, residential care and the types of services provided in skilled nursing homes, intermediate care homes, assisted living communities, and personal care homes supplied with all necessary or useful furnishings, machinery, equipment, parking facilities, landscaping, and facilities for outdoor storage, all as determined by the authority, which determination shall be final and not subject to review; provided, however, that no single project or residential care facility shall be required to render all types of services and levels of care referred to above. There may be included as part of any such project all improvements necessary to the full utilization thereof, including, without limitation, site preparation; roads and streets; sidewalks; water supply; outdoor lighting; belt line railroad; railroad sidings and lead tracks; bridges; causeways; terminals for railroad, automotive, and air transportation; transportation facilities incidental to the project; and the dredging and improving of harbors and waterways. However, none of the aforementioned improvements shall be the primary purpose of any project;

(B) The acquisition, construction, leasing, or equipping of new residential care facilities for the elderly or the improvement, modification, acquisition, expansion, modernization, leasing, equipping, or remodeling of existing residential care facilities for the elderly located or to be located within the area of operation of the authority; and

(C) The acquisition, construction, improvement, or modification of any property, real or personal, which any qualified sponsor might desire to use, acquire, or lease in connection with the operation of any project located or to be located within the area of operation of the authority.

(8) “Qualified sponsor” means any nonprofit corporation which has met criteria established by the authority and which has undertaken to provide residential care facilities for the elderly which will be available for sale or rent to eligible persons. (Ga. L. 1980, p. 1466, § 3; Ga. L. 2011, p. 227, § 15/SB 178.)

The 2011 amendment, effective July 1, 2011, inserted “assisted living communities,” in the first sentence of subparagraph (7)(A).

31-7-113. Creation of Residential Care Facilities for the Elderly Authority in each county and municipality; board of directors.

(a) There is created in and for each county and municipal corporation in this state a public body corporate and politic to be known as the “Residential Care Facilities for the Elderly Authority” of such county or municipal corporation.

(b) Each authority shall consist of a board of seven directors to be appointed by resolution of the governing body of such county or municipal corporation for initial terms of two, four, and six years and thereafter for staggered terms of six years. The governing body of the municipality or county shall initially elect two directors for two years, two directors for four years, and three directors for six years; and thereafter the terms of all directors shall be six years. If at the end of any term of office of any director a successor thereto shall not have been elected, the director whose term of office shall have expired shall continue to hold office until his successor shall be so elected. A majority of the directors shall constitute a quorum but no action may be taken by the board without the affirmative vote of a majority of the full membership of the board.

(c) The directors shall be taxpayers residing in the county or municipal corporation for which the authority is created, and their successors shall be appointed as provided by the resolution described in subsection (b) of this Code section. No director shall be an officer or employee of the county or municipal corporation. The directors shall elect one of their number as chairman and another as vice-chairman and shall also elect a secretary and a treasurer or a secretary-treasurer, any of whom may but need not be a director. The directors shall receive no compensation for their services but shall be reimbursed for their actual expenses incurred in the performance of their duties.

(d) No authority shall transact any business or exercise any powers under this article until the governing body of the county or municipal corporation shall, by proper resolution, declare that there is a need for an authority to function in such county or municipal corporation. A copy of the resolution shall be filed with the Secretary of State, who shall maintain a record of all authorities activated under this article.

(e) The authority may make bylaws and regulations for its governance and may delegate to one or more of its officers, agents, and employees such powers and duties as may be deemed necessary and proper. The authority shall have perpetual existence. (Ga. L. 1980, p. 1466, §§ 4, 5.)

31-7-114. Powers of authorities.

(a) Each authority shall have all of the powers necessary or convenient to carry out and effectuate the purposes and provisions of this article, including, but without limiting the generality of the foregoing, the power:

(1) To bring and defend an action;

(2) To adopt and amend a corporate seal;

(3) To make and execute contracts and other instruments necessary to exercise the powers of the authority, any of which contracts may be made with the county in which the authority is located or with any one or more municipal corporations in such county; and each such county and all municipal corporations therein are authorized to enter into contracts with each authority;

(4) To receive and administer gifts, grants, and devises of any property and to administer trusts;

(5) To acquire by purchase, gift, or construction any real or personal property desired to be acquired by the authorities as part of any project or for the purpose of improving, extending, adding to, reconstructing, renovating, or remodeling any project or part thereof already acquired, or for the purpose of demolition to make room for such project or any part thereof;

(6) To purchase, sell, lease, exchange, transfer, assign, pledge, mortgage, or dispose of, or grant options for any such purposes, any real or personal property or interest therein;

(7) To mortgage, convey, pledge, or assign any properties, revenues, income, tolls, charges, or fees owned, received, or to be received by the authority;

(7.1) To invest and reinvest the funds of the authority in any investment which a domestic insurer may lawfully invest in, to determine the allocation of funds among investments, and to purchase, hold, sell, assign, transfer, and dispose of any securities and other investments in which funds of the authority have been invested, any proceeds of any investments, and any money belonging to the authority;

(7.2) To provide grants, scholarships, loans, or other assistance to students pursuing a course of study relating to gerontology with particular emphasis on residential care and housing facilities for the elderly, subject to such bylaws and regulations as may be made by the authority;

(8) To appoint officers and retain agents, engineers, attorneys, fiscal agents, accountants, and employees and to provide for their compensation and duties;

(9) To extend credit or make loans to any qualified sponsor for the planning, design, construction, acquisition, or carrying out of any project, which credit or loans shall be secured by loan agreements, mortgages, security agreements, contracts, and all other instruments or fees or charges, upon such terms and conditions as the authority shall determine to be reasonable, including provision for the establishment and maintenance of reserves and insurance funds; and, in the exercise of powers granted by this Code section in connection with a project for a qualified sponsor, to require the inclusion in any contract, loan agreement, security agreement, or other instrument such provisions for guaranty, insurance, construction, use, operation, maintenance, and financing of the project as the authority may deem necessary or desirable;

(10) To acquire, accept, or retain equitable interests, security interests, or other interest in any property, real or personal, by mortgage, assignment, security agreement, pledge, conveyance, contract, lien, loan agreement, or other consensual transfer in order to secure the repayment of any moneys loaned or credit extended by the authority;

(11) To construct, acquire, own, repair, remodel, maintain, extend, improve, and equip projects located on land owned or leased by the authority or land owned or leased by others and to pay all or part of the cost of any such project from the proceeds of revenue bonds of the authority or from any contribution or loans by a qualified sponsor, all of which the authority is authorized to receive, accept, and use;

(12) To borrow money and to issue its revenue bonds and bond anticipation notes from time to time and use the proceeds thereof for the purpose of paying all or part of the cost of any project, including the cost of extending, adding to, or improving such project or for the purpose of refunding or refinancing any such bonds of the authority theretofore issued or any other outstanding obligations of the authority; and otherwise to carry out the purposes of this article and to pay all other costs of the authority incident to, or necessary and appropriate to, such purposes, including the provision of moneys to be paid into any fund or funds to secure such bonds and notes; provided,

however, that all such bonds and notes shall be issued in accordance with the procedures and subject to the limitations set forth in subsections (a) through (h) of Code Section 31-7-116;

(13) To pledge, mortgage, convey, assign, hypothecate, or otherwise encumber any property, real or personal, of the authority as security for repayment of authority obligations and to execute any trust agreement, indenture, or security agreement containing any provisions not in conflict with law, which trust agreement, indenture, or security agreement may provide for foreclosure or forced sale of any property of the authority upon default on such obligations either in payment of principal or interest or in the performance of any term or condition contained in the agreement or indenture. The state on behalf of itself and each county, municipal corporation, political subdivision, or taxing district therein waives any right that it or such county, municipal corporation, political subdivision, or taxing district may have to prevent the forced sale or foreclosure of any property of the authority so mortgaged or encumbered; and any such mortgage or encumbrance may be foreclosed in accordance with law and the terms thereof; and

(14) To do all things necessary or convenient to carry out the powers expressly conferred by this article.

(b) The authority shall adopt and promulgate rules and regulations which establish and prescribe criteria for determining eligible persons and qualified sponsors for the purposes of this article. (Ga. L. 1980, p. 1466, § 6; Ga. L. 1985, p. 149, § 31; Ga. L. 1997, p. 1501, § 1.)

31-7-115. Lease or sale of projects.

No project acquired under this article shall be operated by an authority, any municipal corporation, county, or other governmental subdivision; but such projects shall be leased or sold to one or more qualified sponsors. If revenue bonds or other obligations are to be issued to pay all or part of the cost of such project, the project must be so leased or the contract for its sale entered into prior to or simultaneously with the issuance of such bonds or obligations unless the proceeds of the revenue bonds or other obligations are to be loaned to a qualified sponsor in connection with the development of a project, in which case an appropriate loan agreement shall be entered into prior to or simultaneously with the issuance of such bonds or obligations. If the project is sold, the purchase price may be paid at one time or in installments falling due over not more than 40 years from the date of transfer of possession. The lessee or purchaser shall be required to pay all costs of operating and maintaining the leased or purchased property and to pay rentals or installments in amounts sufficient to pay the

principal of and interest and premium, if any, on all of its bonds and other obligations as the principal and interest become due. (Ga. L. 1980, p. 1466, § 7.)

31-7-116. Provisions contained in obligations and security for obligations; procedures for issuance of bonds and bond anticipation notes; interest rates; limitations and conditions.

(a) The obligations of any authority evidenced by bonds, bond anticipation notes, trust indentures, deeds to secure obligations, security agreements, or mortgages executed in connection therewith may contain such provisions not inconsistent with law as shall be determined by the board of directors of the authority. Such instruments may provide for the pledging of all or any part of the revenues of the authority and for the mortgaging, encumbering, or conveying of all or any part of its real or personal property; may covenant against pledging any or all of its revenues, income, or charges; and may further provide for the disposition of proceeds realized from the sale of any bonds and bond anticipation notes, for the replacement of lost, destroyed, stolen, or mutilated bonds and notes and for the payment and redemption of such bonds and notes. Undertakings of an authority may prescribe the procedure by which bondholders and noteholders may enforce rights against the authority and may provide for rights upon breach of any covenant, condition, or obligation of the authority. Bonds, resolutions, trust indentures, mortgages, or deeds to secure obligations executed by an authority and bond anticipation notes executed by an authority may contain such provisions not otherwise contrary to law as the authority shall deem necessary or desirable.

(b) The proceeds derived from the sale of any bonds or bond anticipation notes issued by an authority shall be held and used for the ultimate purpose of paying, directly or indirectly as permitted in this article, all or part of the cost of any project or for the purpose of refunding any bond anticipation notes issued in accordance with this article or refunding any previously issued bonds of the authority.

(c) All bonds and bond anticipation notes issued by an authority shall be revenue obligations of such authority and may be made payable out of any revenues or other receipts, funds, or moneys of the authority, subject only to any agreements with the holders of other bonds or bond anticipation notes or to particular security agreements pledging any particular revenues, receipts, funds, moneys, or other property.

(d) Issuance by any authority of one or more series of bonds or bond anticipation notes for one or more purposes shall not preclude the authority from issuing other bonds or notes in connection with the same

project or in connection with any other projects; provided, however, that the proceeding wherein any subsequent bonds or bond anticipation notes shall be issued shall recognize and protect any prior pledge or mortgage made in any prior security agreement or made for any prior issue of bonds or bond anticipation notes unless, in the resolution authorizing such prior issue, the right is expressly reserved to the authority to issue subsequent bonds or bond anticipation notes on a parity with such prior issue.

(e) An authority shall have the power and is authorized, whenever revenue bonds of the authority shall have been validated as provided in this article, to issue from time to time its notes in anticipation of the issuance of such bonds as validated and to renew from time to time any such notes by the issuance of new notes, whether the notes to be renewed have or have not matured. The authority may issue notes only to provide funds which would otherwise be provided by the issuance of the bonds as validated. The notes may be authorized, sold, executed, and delivered in the same manner as bonds. As with its bonds, an authority may sell such notes at public or private sale. Any resolution or resolutions authorizing notes of an authority or any issue thereof may contain any provisions which an authority is authorized to include in any resolution or resolutions authorizing bonds of an authority or any issue thereof, and an authority may include in any notes any terms, covenants, or conditions which it is authorized to include in any bonds. Validation of such bonds shall be a condition precedent to the issuance of such notes, but it shall not be required that such notes be judicially validated. Bond anticipation notes shall not be issued in an amount exceeding the par value of the bonds in anticipation of which they are to be issued.

(f) The interest rate on or rates to be borne by any bonds, notes, or obligations issued by the authority shall be fixed by the board of directors of the authority and any limitations with respect to interest rates found in Article 3 of Chapter 82 of Title 36 or in the usury laws of this state shall not apply to obligations issued under this article.

(g) All revenue bonds issued by an authority under this article shall be issued and validated under and in accordance with the procedure therefor set forth in Article 3 of Chapter 82 of Title 36, as heretofore and hereafter amended, except as specifically set forth in this subsection:

(1) Revenue bonds issued by an authority may be in such form, either coupon or fully registered, or both coupon and fully registered, and may be subject to such exchangeability and transferability provisions as the bond resolution authorizing the issuance of such bonds or any indenture or trust agreement may provide;

(2) The signature of the clerk of the superior court in which any bonds are validated on the certificate of validation of such bonds may

be affixed by facsimile or by manual execution; such entry shall be original evidence of the fact of the validation of any bond and shall be received as original evidence in any court in this state;

(3) In lieu of specifying the rate or rates of interest which revenue bonds to be issued by an authority are to bear, the notice to the district attorney or the Attorney General and the notice to the public of the time, place, and date of the validation hearing may state that the bonds when issued will bear interest at a rate not exceeding a maximum per annum rate of interest specified in such notices or, in the event the bonds are to bear different rates of interest for different maturity dates, that none of such rates will exceed the maximum rate specified in the notices. Nothing contained in this paragraph shall be construed as prohibiting or restricting the right of the authority to sell such bonds at a discount, even if in so doing the effective interest cost resulting therefrom would exceed the maximum per annum interest rate specified in such notices; and

(4) The term "cost of project" shall have the meaning prescribed in paragraph (2) of Code Section 31-7-112 whenever referred to in bond resolutions of an authority, bonds and bond anticipation notes issued by an authority, or notices and proceedings to validate such bonds.

(h) Before issuing any bonds to finance any project, the authority shall obtain from the qualified sponsor of the project an undertaking that only eligible persons will be permitted to use or acquire any of the facilities constituting a part of the project or to enjoy or benefit from any of the services to be rendered in connection with any such project.

(i) No bonds or bond anticipation notes except refunding bonds shall be issued by an authority under this article unless its board of directors shall adopt a resolution finding that the project for which such bonds or notes are to be issued will promote the objectives stated in subsection (b) of Code Section 31-7-111 and will increase or maintain employment in the territorial area of such authority. Nothing contained in this Code section shall be construed as permitting any authority created under this article or any qualified sponsor to finance, construct, or operate any project without obtaining any certificate of need or other approval, permit, or license which, under the laws of this state, is required in connection therewith. (Ga. L. 1980, p. 1466, §§ 8, 9.)

Cross references. — Revenue bonds generally, § 36-82-60 et seq.

31-7-117. Liability for bonds or other obligations.

No bonds or other obligations of and no indebtedness incurred by any authority shall constitute an indebtedness or obligation of the state or any county, municipal corporation, or political subdivision thereof; nor

shall any act of any authority in any manner constitute or result in the creation of an indebtedness of the state or any such county, municipal corporation, or political subdivision. All such bonds and obligations shall be payable solely from the revenues therein pledged to such payment, including pledged rentals, sales proceeds, insurance proceeds, and condemnation awards. No holder or holders of any such bonds or obligations shall ever have the right to compel any exercise of the taxing power of the state or any county, municipal corporation, or political subdivision thereof nor to enforce the payment thereof against any property of the state or any such county, municipal corporation, or political subdivision. (Ga. L. 1980, p. 1466, § 11.)

31-7-118. Exemption from taxation.

(a) Each authority created under this article is created for nonprofit and public purposes, and it is found, determined, and declared that:

(1) The creation of each such authority and the carrying out of its corporate purposes are in all respects for the benefit of the people of this state;

(2) The authority is an institution of purely public charity and will be performing an essential governmental function in the exercise of the powers conferred upon it by this article; and for such reasons, the state covenants with the holders of the bonds issued under this article that the authority shall be required to pay no taxes or assessments imposed by the state or any of its counties, municipal corporations, political subdivisions, or taxing districts upon any property acquired by the authority or under its jurisdiction, control, possession, or supervision or leased by it to others or upon its activities in the operation or maintenance of any such property or on any income derived by the authority in the form of fees, recording fees, rentals, charges, purchase price, installments, or otherwise; and

(3) The bonds of the authority, their transfer, and the income derived therefrom shall at all times be exempt from taxation within the state.

(b) The tax exemption provided in this Code section shall not include any exemption from sales and use tax on property purchased by the authority or for use by the authority. (Ga. L. 1980, p. 1466, § 12; Ga. L. 1985, p. 149, § 31.)

31-7-119. Holding moneys as trust funds; pledges for payment of bonds.

(a) All moneys received pursuant to the authority of this article, whether as proceeds from the sale of revenue bonds or other obligations,

as grants or other contributions, or as revenues and earnings, shall be deemed to be trust funds to be held and applied solely as provided in this Code section. In the resolution providing for the issuance of revenue bonds or in the trust indenture, the authority shall provide for the payment of the proceeds of the sale of the bonds, earnings, and revenues to be received to any officer who, or any agency, bank, or trust company which, shall act as trustee of such funds and shall hold and apply the same to the purposes of this article, subject to the provisions of this article and the provisions of any such resolution or any trust indenture.

(b) The authority may pledge for the payment of its bonds such assets, funds, and properties as the resolution providing for the issuance of its bonds may provide. Any such pledge made by the authority shall be valid and binding from the time when the pledge is made; the moneys or properties so pledged and thereafter received by the authority shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act; and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind against the authority, irrespective of whether such parties have notice thereof. No resolution or any other instrument by which a pledge is created need be recorded. (Ga. L. 1980, p. 1466, § 13.)

31-7-120. Construction of article.

This article shall be liberally construed to effect the purposes hereof, and insofar as this article may be inconsistent with any other law, including the charter of any municipal corporation, this article shall be controlling. The sale or issuance of bonds by any authority shall not be subject to regulation under Chapter 5 of Title 10 or any other law. No proceeding or publication not required by this article shall be necessary to the performance of any act authorized in this article, nor shall any such act be subject to referendum. (Ga. L. 1980, p. 1466, § 10; Ga. L. 1985, p. 149, § 31.)

ARTICLE 6

PEER REVIEW GROUPS

Law reviews. — For note on 1995 amendments of Code sections in this article, see 12 Ga. St. U.L. Rev. 258 (1995).

RESEARCH REFERENCES

ALR. — Right of voluntary disclosure of review or doctor evaluation processes, 60 privileged proceedings of hospital medical ALR4th 1273.

31-7-130. Legislative intent.

It is the intent of the General Assembly to provide protection for those individuals who are members of peer review groups which evaluate the quality and efficiency of professional health care providers and to protect the confidentiality of their records. (Code 1933, § 84-7601, enacted by Ga. L. 1980, p. 1282, § 1.)

Law reviews. — For article, “The Georgia Peer Review Privilege,” see 11 Ga. St. B.J. 16 (2005).

JUDICIAL DECISIONS

Legislative intent. — General Assembly did not intend to eliminate, through peer review immunity, a hospital’s responsibility to the hospital’s patients to exercise reasonable care in ensuring that medical care providers using the hospital’s facilities are qualified. *McCall v. Henry Med. Ctr., Inc.*, 250 Ga. App. 679, 551 S.E.2d 739 (2001).

Georgia peer review and medical review statutes, which establish the privilege for the proceedings and records of peer review organizations and medical review committees, also provide for immunity to participants and witnesses in such proceedings under: (1) O.C.G.A. § 31-7-130, which sets forth the intent of the Georgia General Assembly; (2) O.C.G.A. § 31-7-132(a), which provides immunity from liability for peer review; (3) O.C.G.A. §§ 31-7-133(a) and 31-7-141, which provide immunity for medical review committee members from claims for damages filed by health care providers; and (4) O.C.G.A. § 31-7-143, which provides that peer review and medical review proceed-

ings are both absolutely privileged. *Patton v. St. Francis Hosp.*, 260 Ga. App. 202, 581 S.E.2d 551 (2003).

Purpose of hospital medical review committees. — Purpose for establishment of hospital medical review committees is to foster delivery of quality health care services by providing a method for in-house review of clinical work performed in a hospital. *Eubanks v. Ferrier*, 245 Ga. 763, 267 S.E.2d 230 (1980).

No immunity for negligence when peer review not involved. — Health care organization was not engaging in peer review, and thus, was not immune from liability for the organization’s negligence under O.C.G.A. § 31-7-130, when a Medicaid patient died as the result of having been denied an operation based on allegedly negligent precertification review of the patient’s case by the organization. *Fulton-DeKalb Hosp. Auth. v. Dawson*, 270 Ga. 376, 509 S.E.2d 28 (1998).

Cited in *Fulton-DeKalb Hosp. Auth. v. Dawson*, 270 Ga. 376, 509 S.E.2d 28 (1998); *Patton v. St. Francis Hosp.*, 246 Ga. App. 4, 539 S.E.2d 526 (2000).

RESEARCH REFERENCES

ALR. — Scope and extent of protection from disclosure of medical peer review proceedings relating to claim in medical malpractice action, 69 ALR5th 559.

31-7-131. Definitions.

As used in this article, the term:

(1) “Peer review” means the procedure by which professional health care providers evaluate the quality and efficiency of services ordered or performed by other professional health care providers,

including practice analysis, inpatient hospital and extended care facility utilization review, medical audit, ambulatory care review, claims review, underwriting assistance, and the compliance of a hospital, nursing home, convalescent home, or other health care facility operated by a professional health care provider with the standards set by an association of health care providers and with applicable laws, rules, and regulations.

(2) "Professional health care provider" means an individual who is licensed, or an organization which is approved, to practice or operate in the health care field under the laws of Georgia, including, but not limited to, the following individuals or organizations:

- (A) A physician;
- (B) A dentist;
- (C) A podiatrist;
- (D) A chiropractor;
- (E) An optometrist;
- (F) A psychologist;
- (G) A pharmacist;
- (H) A registered or practical nurse;
- (I) A physical therapist;
- (J) An administrator of a hospital, a nursing or convalescent home, or other health care facility;
- (K) A corporation or other organization operating a hospital, a nursing or convalescent home, or other health care facility, as well as the officers, directors, or employees of such corporation or organization or the members of such corporation's or organization's governing board who are performing a peer review function;
- (L) A rehabilitation supplier registered with the State Board of Workers' Compensation; and
- (M) An occupational therapist.

(3) "Review organization" means a nationally recognized health care accreditation body or any panel, committee, or organization:

- (A) Which:
 - (i) Is primarily composed of professional health care providers;
 - (ii) Is an insurer, self-insurer, health maintenance organization, preferred provider organization, provider network, or other organization engaged in managed care; or

(iii) Provides professional liability insurance for health care providers; and

(B) Which engages in or utilizes peer reviews and gathers and reviews information relating to the care and treatment of patients for the purposes of:

(i) Evaluating and improving the quality and efficiency of health care rendered;

(ii) Reducing morbidity or mortality;

(iii) Evaluating claims against health care providers or engaging in underwriting decisions in connection with professional liability insurance coverage for health care providers;

(iv) Compiling aggregate data concerning the procedures and outcomes of hospitals for the purposes of evaluating the quality and efficiency of health care services. Under no circumstances shall any such aggregate data or any other peer review information relating to an individual professional health care provider be disclosed or released to any person or entity without the express prior written consent of such health care provider, but such aggregate data or other peer review information may be released to another review organization upon the written request of such organization if such requesting review organization has specific reason to believe that immediate access to such aggregate data or information is necessary to protect the public health, safety, and welfare. Such aggregate data and other peer review information shall be used for peer review purposes only and in no event shall such aggregate data or any other peer review information be sold or otherwise similarly distributed, but a review organization shall be authorized to utilize the services of and pay a fee to another person or entity to compile or analyze such aggregate data;

(v) Evaluating the quality and efficiency of health care services rendered by a professional health care provider in connection with such provider's participation as or request to participate as a provider in or for an insurer, self-insurer, health maintenance organization, preferred provider organization, provider network, or other organization engaged in managed care; or

(vi) Performing any of the functions or activities described in Code Section 31-7-15. (Ga. L. 1975, p. 739, § 1; Code 1933, § 84-7602, enacted by Ga. L. 1980, p. 1282, § 1; Ga. L. 1984, p. 699, § 1; Ga. L. 1985, p. 149, § 31; Ga. L. 1987, p. 656, § 1; Ga. L. 1988, p. 13, § 31; Ga. L. 1991, p. 1016, § 1; Ga. L. 1995, p. 612, § 3; Ga. L. 2001, p. 192, § 2; Ga. L. 2012, p. 337, § 3/SB 361.)

The 2012 amendment, effective July 1, 2012, substituted “a nationally recognized health care” for “the Joint Commission on Accreditation of Healthcare Organizations. Such term also means any other national” near the beginning of the introductory language of paragraph (3).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1995, “; and” was substituted for “, and” at the end of division (3)(A)(iii).

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Editor’s notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 88-3201, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section.

Review committee must meet qualifications for article to apply to it. — In order for the information generated or maintained by a committee exercising review functions to be subject to the provisions of confidentiality the committee must meet the qualifications set forth in this section. *Hollowell v. Jove*, 247 Ga. 678, 279 S.E.2d 430 (1981) (decided under former Code 1933, § 88-3201).

Hospital accreditation organization records not protected. — Hospital accreditation records generated by a non-profit organization are not protected from

disclosure as the records of a confidential review organization under O.C.G.A. § 31-7-133 because the organization is not a “review organization” comprised primarily of “professional health care providers” as those terms are defined by O.C.G.A. § 31-7-131. *Georgia Hosp. Ass’n v. Ledbetter*, 260 Ga. 477, 396 S.E.2d 488 (1990).

“Peer review.” — Nothing in O.C.G.A. § 31-7-131(3)(B)(vi) implies that every part of the review in O.C.G.A. § 31-7-15 constitutes peer review. *Hosp. Auth. v. Meeks*, 285 Ga. 521, 678 S.E.2d 71 (2009).

Cited in *Emory Univ. v. Houston*, 185 Ga. App. 289, 364 S.E.2d 70 (1987); *Patton v. St. Francis Hosp.*, 246 Ga. App. 4, 539 S.E.2d 526 (2000); *Hosp. Auth. of Valdosta v. Meeks*, 294 Ga. App. 629, 669 S.E.2d 667 (2008).

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Trauma advisory committee as review organization. — Since the Trauma Advisory Committee for Emergency Medical Services is a review organization consisting of surgeons licensed in the State of Georgia which evaluates care provided by professional health care providers as defined in paragraph (2) of O.C.G.A. § 31-7-131 for the purposes of improving

the quality of care rendered and reducing morbidity and mortality due to trauma, it is a review organization within the meaning of paragraph (3) of O.C.G.A. § 31-7-131 and is covered by the immunity and confidentiality provisions of O.C.G.A. §§ 31-7-132 and 31-7-133. 1988 Op. Att’y Gen. No. 88-5.

31-7-132. Immunity from liability for peer review activities; immunity from liability of persons providing information.

(a) No professional health care provider nor any individual who serves as a member or employee of a professional health care provider or review organization nor any individual who furnishes counsel or services to a professional health care provider or review organization shall be held, by reason of the performance of peer review activities, to

have violated any criminal law or to be civilly liable under any law unless he was motivated by malice toward any person affected by such activity.

(b) No person, whether as a witness or otherwise, who provides information regarding peer review to a professional health care provider or review organization shall be held, by reason of having provided such information, to have violated any criminal law or to be civilly liable under any law unless such information is false and the person providing it knew that such information was false. (Ga. L. 1975, p. 739, §§ 2, 3; Code 1933, § 84-7603, enacted by Ga. L. 1980, p. 1282, § 1; Ga. L. 1987, p. 1494, § 2; Ga. L. 1995, p. 612, § 3.)

Cross references. — Immunity of medical review committee members from civil liability, § 31-7-140 et seq. Nonliability of licensed dentist serving on peer review board for damages for any action

taken by such board, § 43-11-16. Receipt of evidence before Composite State Board of Medical Examiners regarding licensee's or applicant's fitness to practice medicine, § 43-34-8.

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Immunity from civil or criminal liability. — If an organization meets the definition of review organization and is conducting peer review within the meaning of O.C.G.A. § 31-7-132, a health care provider or member of a review organization is immune from criminal or civil liability, provided the health care provider is acting without malice. *Fulton-DeKalb Hosp. Auth. v. Dawson*, 270 Ga. 376, 509 S.E.2d 28 (1998).

Georgia peer review and medical review statutes, which establish the privilege for the proceedings and records of peer review organizations and medical review committees, also provide for immunity to participants and witnesses in such proceedings under: (1) O.C.G.A. § 31-7-130, which sets forth the intent of the Georgia General Assembly; (2) O.C.G.A. § 31-7-132(a), which provides immunity from liability for peer review; (3) O.C.G.A. §§ 31-7-133(a) and 31-7-141, which provide immunity for medical review committee members from claims for damages filed by health care providers; and (4) O.C.G.A. § 31-7-143, which provides that peer review and medical review proceedings are both absolutely privileged. *Patton v. St. Francis Hosp.*, 260 Ga. App. 202, 581 S.E.2d 551 (2003).

Preemption. — To the extent that peer reviewer immunity under O.C.G.A.

§ 31-7-132(a) was conditioned upon the absence of the hospital's bias in denying the doctor's staff privileges, § 31-7-132(a) was preempted by the Health Care Quality Improvement Act (Act), 42 U.S.C. § 11101 et seq., under which bias was irrelevant; thus, the grant of summary judgment to the hospital on the ground that the hospital was entitled to immunity under the Act was not an error. *Patrick v. Floyd Med. Ctr.*, 255 Ga. App. 435, 565 S.E.2d 491 (2002).

Under O.C.G.A. § 31-7-132(a), a peer reviewer is immune unless the reviewer is motivated by malice toward any person affected by such activity, and under O.C.G.A. § 31-7-141, a medical review committee member is immune if the committee member acts without malice or fraud; to the extent that peer review and medical review immunity are conditioned upon the absence of malice and deception, the statutes are preempted by the Health Care Quality Improvement Act of 1986, specifically 42 U.S.C. § 11111(a), under which bias is irrelevant. *Patton v. St. Francis Hosp.*, 260 Ga. App. 202, 581 S.E.2d 551 (2003).

Federal law does not completely preempt O.C.G.A. § 31-7-132(a) as the Health Care Quality Improvement Act of 1986 (HCQIA), 42 U.S.C. § 11101 et seq.,

only preempts § 31-7-132(a) to the extent the two statutes conflict; because the HCQIA does not provide immunity against claims for equitable relief, it is not in conflict with that aspect of § 31-7-132(a) that provides immunity for equitable relief claims. *Taylor v. Kennestone Hosp., Inc.*, 266 Ga. App. 14, 596 S.E.2d 179 (2004).

Georgia's peer review statute, O.C.G.A. § 31-7-132(a), was preempted by the Health Care Quality Improvement Act of 1986, 42 U.S.C. § 11101 et seq., in a doctor's suit alleging that defendants initiated a peer review proceeding for the purpose of closing down the doctor's competing dialysis center because the allegations stated that defendants were motivated by malice, and the doctor sought only monetary damages, not equitable relief. *Wood v. Archbold Med. Ctr.*, No. 6:05-CV-53 (HL), 2006 U.S. Dist. LEXIS 44292 (M.D. Ga. June 28, 2006).

O.C.G.A. § 31-7-132 was not intended to provide an absolute shield of immunity protecting utilization review providers from potential liability for the consequences of their administrative acts. *Fulton-DeKalb Hosp. Auth. v. Dawson*, 270 Ga. 376, 509 S.E.2d 28 (1998).

Credentialing information not covered by civil immunity. — O.C.G.A. § 31-7-15 does not expand the privilege set forth in O.C.G.A. § 31-7-133(a) to those proceedings and records of a peer review committee which involve only the credentialing process and not a peer review function. The same analysis is equally applicable in holding that § 31-7-15 does not expand the civil immu-

nity otherwise afforded to peer review groups under O.C.G.A. § 31-7-132(a) so as to include all aspects of the credentialing process. *Hosp. Auth. v. Meeks*, 285 Ga. 521, 678 S.E.2d 71 (2009).

Malice allegation is not sufficient to trigger application of confidentiality requirement so as to allow the opportunity for full discovery of peer review material in every case; however, a motion to compel discovery could not be denied in its entirety, even though some of the materials sought were privileged. *Freeman v. Piedmont Hosp.*, 264 Ga. 343, 444 S.E.2d 796 (1994).

Equitable claims covered. — Unlike the Health Care Quality Improvement Act of 1986, 42 U.S.C. § 11101 et seq., O.C.G.A. § 31-7-132(a) provides immunity from civil liability, not just from monetary damages; consequently, Georgia's peer review statute covers claims for equitable relief. *Taylor v. Kennestone Hosp., Inc.*, 266 Ga. App. 14, 596 S.E.2d 179 (2004).

Hospital immune from liability because malice not established. — Surgeon sued a hospital for revoking the surgeon's medical staff privileges. As the evidence of the surgeon's errors, some of which caused a patient's death, supported the revocation, and as the surgeon did not prove that the hospital acted with malice in revoking the surgeon's medical privileges, the hospital was entitled to summary judgment based on the hospital's immunity from liability under Georgia's peer review statute, O.C.G.A. § 31-7-132. *Burrows v. Northside Hosp.*, 294 Ga. App. 472, 671 S.E.2d 176 (2008).

Cited in *Patton v. St. Francis Hosp.*, 246 Ga. App. 4, 539 S.E.2d 526 (2000).

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Member of peer review panel for rehabilitation suppliers not protected. — Person who is a private rehabilitation supplier serving on a peer review panel for the State Board of Workers' Compensation would not be afforded the statutory protection provided in O.C.G.A. § 31-7-130 et seq., regardless of whether that peer review committee conformed to the model promulgated by the National

Association of Rehabilitation Professionals. 1987 Op. Att'y Gen. 87-4.

Applicability to trauma advisory committee. — Since the Trauma Advisory Committee for Emergency Medical Services is a review organization consisting of surgeons licensed in the State of Georgia which evaluates care provided by professional health care providers as defined in O.C.G.A. § 31-7-131(2) for the

purposes of improving the quality of care rendered and reducing morbidity and mortality due to trauma, it is a review organization within the meaning of

§ 31-7-131(3) and is covered by the immunity and confidentiality provisions of O.C.G.A. §§ 31-7-132 and 31-7-133. 1988 Op. Att'y Gen. No. 88-5.

RESEARCH REFERENCES

ALR. — Tort liability of medical society or professional association for failure to discipline or investigate negligent or oth-

erwise incompetent medical practitioner, 72 ALR4th 1148.

31-7-133. Confidentiality of review organization's records.

(a) Except in proceedings alleging violation of this article, the proceedings and records of a review organization shall be held in confidence and shall not be subject to discovery or introduction into evidence in any civil action; and no person who was in attendance at a meeting of such organization shall be permitted or required to testify in any such civil action as to any evidence or other matters produced or presented during the proceedings or activities of such organization or as to any findings, recommendations, evaluations, opinions, or other actions of such organization or any members thereof. The confidentiality provisions of this article shall also apply to any proceedings, records, actions, activities, evidence, findings, recommendations, evaluations, opinions, data, or other information shared between review organizations which are performing a peer review function or disclosed to a governmental agency as required by law. However, information, documents, or records otherwise available from original sources are not to be construed as immune from discovery or use in any such civil action merely because they were presented during proceedings of such organization, nor should any person who testifies before such organization or who is a member of such organization be prevented from testifying as to matters within such person's knowledge; but such witness cannot be asked about such witness's testimony before such organization or about opinions formed by such witness as a result of the organization hearings. Notwithstanding the foregoing, the Department of Community Health may inspect and copy peer review materials maintained by certain providers when it is determined by the department to be necessary in the performance of the department's licensure and certification responsibilities under Code Section 31-7-15; provided, however, such inspection and copying shall not waive or abrogate the confidentiality of such peer review materials as set forth in this Code section and in Code Section 31-7-15.

(b) This Code section shall not apply to prevent:

(1) The disclosure under Article 4 of Chapter 18 of Title 50 of those documents in the department's custody which are records, reports, or

recommendations of a nationally recognized health care accreditation body and which are provided by an institution to the department for licensure purposes under subsection (b) of Code Section 31-7-3;

(2) The use of peer review documents in any proceeding involving the permitting or licensing of an institution pursuant to this chapter to the extent necessary to challenge the effectiveness of the institution's peer review system; provided, however, such use shall not waive or abrogate the confidentiality of such documents as set forth in this Code section and in Code Section 31-7-15; or

(3) A health care provider from obtaining the specific reasons and the records and proceedings related to such provider's exclusion or termination as a participating provider in a health maintenance organization, provider network, or other organization which engages in managed care if such provider has brought a civil action against such health maintenance organization, provider network, or other organization for wrongful exclusion or termination. (Ga. L. 1975, p. 739, § 4; Code 1933, § 84-7604, enacted by Ga. L. 1980, p. 1282, § 1; Ga. L. 1984, p. 699, § 2; Ga. L. 1985, p. 149, § 31; Ga. L. 1991, p. 1016, § 2; Ga. L. 1995, p. 612, § 3; Ga. L. 2001, p. 192, § 3; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2012, p. 337, § 4/SB 361.)

The 2012 amendment, effective July 1, 2012, substituted "a nationally recognized health care accreditation body" for "the Joint Commission on Accreditation of Healthcare Organizations or other national accreditation body" near the beginning of paragraph (b)(1).

Cross references. — Privileges generally, § 24-9-20 et seq. Privilege of state officers and employees to refuse to disclose

identity of persons furnishing information pursuant to medical or public health investigation by Department of Human Resources (now the Department of Community Health for these purposes), § 50-18-72.

Law reviews. — For note on the 2001 amendment to this Code section, see 18 Ga. St. U.L. Rev. 249 (2001).

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Legislative intent. — Georgia Legislature has concluded that confidentiality of proceedings involving review and investigation of an individual physician's standard of care in treatment of the physician's patients should be preserved. *Scott v. McDonald*, 70 F.R.D. 568 (N.D. Ga. 1976) (see O.C.G.A. § 31-7-133).

Purpose of Code section. — Purpose for enactment of O.C.G.A. § 31-7-133 is to foster delivery of quality medical services by preserving the candor necessary for effective functioning of hospital medical review committees (now organizations). *Eubanks v. Ferrier*, 245 Ga. 763, 267

S.E.2d 230 (1980); *Hollowell v. Jove*, 247 Ga. 678, 279 S.E.2d 430 (1981).

Rationale for this section is apparently to afford hospitals and similar institutions rendering medical care to examine, in the first instance, the propriety of procedures used within their institutions, in order to take curative action to remedy questionable procedures or to prevent stigmatization of certain physicians under investigation that would necessarily follow from disclosure of such proceedings, whether the medical review committee's (now organization's) disposition is favorable or unfavorable to the physician under

investigation, and injury to hospital's ability to make in-house examination of adequacy of treatment afforded its patients is sufficiently great to warrant its confidentiality. *Scott v. McDonald*, 70 F.R.D. 568 (N.D. Ga. 1976) (see O.C.G.A. § 31-7-133).

O.C.G.A. § 31-7-15 does not expand the privilege set forth in O.C.G.A. § 31-7-133(a) to those proceedings and records of a peer review committee which involve only the credentialing process and not a peer review function. The same analysis is equally applicable in holding that § 31-7-15 does not expand the civil immunity otherwise afforded to peer review groups under O.C.G.A. § 31-7-132(a) so as to include all aspects of the credentialing process. *Hosp. Auth. v. Meeks*, 285 Ga. 521, 678 S.E.2d 71 (2009).

Relationship to other privileges. — Georgia law did not allow for a self-critical analysis privilege; the fact that the peer review privilege is limited to review organizations within the healthcare field weighs heavily against extending such privilege to a corporate organization. *Lara v. Tri-State Drilling*, 504 F. Supp. 2d 1323 (N.D. Ga. 2007).

Not applicable in federal civil rights action. — Plaintiffs in a 42 U.S.C. § 1983 action for a death of an inmate were granted a motion to compel disclosure under Fed. R. Civ. P. 26 and 37 of a morbidity and mortality report generated by jail medical official and related correspondence and documents because the court refused under Fed. R. Evid. 501 to recognize the medical peer review privilege of O.C.G.A. §§ 31-7-133 and 31-7-143 in that the need for probative evidence in a civil rights action outweighed the need for privilege. *Jenkins v. Dekalb County*, 242 F.R.D. 652 (N.D. Ga. 2007).

Embargo on use of information in civil litigation. — O.C.G.A. § 31-7-133 legislatively approves the view that constructive professional criticism cannot occur in an atmosphere of apprehension that one doctor's suggestion will be used as a denunciation of a colleague's conduct in a malpractice suit and it embraces the goal of medical staff candor at the cost of impairing plaintiff's access to evidence. *Hollowell v. Jove*, 247 Ga. 678, 279 S.E.2d 430 (1981).

General Assembly has placed an absolute embargo upon the discovery and use of all proceedings, records, findings, and recommendations of peer review groups and medical review committees in civil litigation. The source of peer review information is irrelevant. *Emory Clinic v. Houston*, 258 Ga. 434, 369 S.E.2d 913 (1988).

In a case involving the Georgia medical review and peer review statutes, O.C.G.A. §§ 31-7-133(a) and 31-7-143, the trial court erred in creating additional discovery exceptions not allowed by the statutes because the Georgia General Assembly placed an absolute embargo upon the discovery and use of all proceedings, records, findings, and recommendations of peer review groups and medical review committees in civil litigation. *Hosp. Auth. of Valdosta v. Meeks*, 294 Ga. App. 629, 669 S.E.2d 667 (2008), *aff'd*, 285 Ga. 521, 678 S.E.2d 71 (2009).

O.C.G.A. § 31-7-133 is in derogation of general policy in favor of discovery and admissibility of probative evidence. *Hollowell v. Jove*, 247 Ga. 678, 279 S.E.2d 430 (1981).

Term "proceedings and records" in O.C.G.A. § 31-7-133 includes records of the medical review committee (now organization) relating to care of patients other than plaintiff or the decedent whose estate or interests are represented by the plaintiff; such a broad range exclusion is necessary to promote the underlying purpose of the section and is clearly authorized by the statutory language because it is apparent that a candid evaluation of a physician's performance will likely necessitate a discussion of services rendered to patients other than the plaintiff or the decedent. *Hollowell v. Jove*, 247 Ga. 678, 279 S.E.2d 430 (1981).

Scope of immunity provided. — This section does not immunize production of documents from original sources that might have fortuitously been considered during hearing, nor does the statute prevent some participant from medical review proceedings from giving testimony as to matters within the participant's knowledge or as to an applicable standard of care; it merely prohibits requiring a member of the committee (now organization) to

testify as to what the member or another person might have said during the course of proceedings. *Scott v. McDonald*, 70 F.R.D. 568 (N.D. Ga. 1976) (see O.C.G.A. § 31-7-133).

Even though physician, denied privileges by a peer review committee, contended that false information motivated by malice was the basis for the denial, the privilege nevertheless applied. *Baldwin County Hosp. Auth. v. Wright*, 202 Ga. App. 9, 413 S.E.2d 484 (1991), cert. denied, 202 Ga. App. 905, 413 S.E.2d 484 (1992).

Georgia peer review and medical review statutes, which establish the privilege for the proceedings and records of peer review organizations and medical review committees, also provide for immunity to participants and witnesses in such proceedings under: (1) O.C.G.A. § 31-7-130, which sets forth the intent of the Georgia General Assembly; (2) O.C.G.A. § 31-7-132(a), which provides immunity from liability for peer review; (3) O.C.G.A. §§ 31-7-133(a) and 31-7-141, which provide immunity for medical review committee members from claims for damages filed by health care providers; and (4) O.C.G.A. § 31-7-143, which provides that peer review and medical review proceedings are both absolutely privileged. *Patton v. St. Francis Hosp.*, 260 Ga. App. 202, 581 S.E.2d 551 (2003).

Use of peer review privilege was not willful tort under § 51-12-6. — In an abusive litigation action under O.C.G.A. § 51-7-80 et seq., a plaintiff could not recover for damages to the plaintiff's peace, happiness, or feelings under O.C.G.A. § 51-12-6, as there was no allegation of a physical injury, and the plaintiff did not allege a willful tort; there was no support in the record that the assertion of the peer review privilege under O.C.G.A. § 31-7-133(a) constituted a willful tort. *Freeman v. Wheeler*, 277 Ga. App. 753, 627 S.E.2d 86 (2006).

Malice exception does not apply to the discovery privileges set forth in O.C.G.A. §§ 31-7-133 and 31-7-143. *Patton v. St. Francis Hosp.*, 246 Ga. App. 4, 539 S.E.2d 526 (2000).

Malice allegation is not sufficient to trigger application of confidentiality

requirement so as to allow the opportunity for full discovery of peer review material in every case; however, a motion to compel discovery could not be denied in its entirety, even though some of the materials sought were privileged. *Freeman v. Piedmont Hosp.*, 264 Ga. 343, 444 S.E.2d 796 (1994).

Hospital accreditation records not immune. — Hospital accreditation records generated by a nonprofit organization are not protected from disclosure as the records of a confidential review organization under O.C.G.A. § 31-7-133 because the organization is not a "review organization" comprised primarily of "professional health care providers" as those terms are defined by O.C.G.A. § 31-7-131. *Georgia Hosp. Ass'n v. Ledbetter*, 260 Ga. 477, 396 S.E.2d 488 (1990).

Information as to hospital's infection rate. — O.C.G.A. §§ 31-7-133 and 31-7-143 did not prevent discovery of recorded data pertaining to hospital's infection incidence because it was factual data from the original hospital records which the infection rate nurse had used to compile the information the nurse presented to the peer review committee. *Cobb County Kennestone Hosp. Auth. v. Martin*, 208 Ga. App. 326, 430 S.E.2d 604 (1993).

Incident reporting forms. — Hospital's incident reporting forms, termed "notification forms" and "occurrence reports," were exactly the type of documents protected from discovery by the peer review privilege. *Ussery v. Children's Healthcare of Atlanta, Inc.*, 289 Ga. App. 255, 656 S.E.2d 882 (2008).

Information encompassed by Code section. — O.C.G.A. § 31-7-133 applies to information generated in the course of medical review committee (now organization) proceedings which relates to physician's general competence, the physician's competence to treat the condition from which the decedent suffered as evidenced by the physician's treatment of other similarly afflicted patients and the physician's competence to perform medical procedures other than those specifically involved in the subject litigation. *Hollowell v. Jove*, 247 Ga. 678, 279 S.E.2d 430 (1981).

There are two kinds of privileged information covered by the peer review statute: (1) material that relates directly to the peer review investigation, which is always nondiscoverable, despite its source; and (2) information that would have existed regardless of the institution's investigation, but is sought from the peer review body itself. *Doe v. Unum Life Ins. Co. of Am.*, 891 F. Supp. 607 (N.D. Ga. 1995).

In a case involving the Georgia medical review and peer review statutes, O.C.G.A. §§ 31-7-133(a) and 31-7-143, the trial court erred in determining that nothing in a medical center's credentialing files was subject to discovery because, to the extent that the credentialing process involved a peer review committee's evaluation of a doctor's performance of medical procedures, the information was not discoverable; however, to the extent that there was information in the doctor's credentialing files that did not involve evaluations of the doctor's performance of these procedures, that information was discoverable. *Hosp. Auth. of Valdosta v. Meeks*, 294 Ga. App. 629, 669 S.E.2d 667 (2008), *aff'd*, 285 Ga. 521, 678 S.E.2d 71 (2009).

Information obtainable from "original sources," that is, hospital medical records and information within the knowledge of an infection rate nurse, under O.C.G.A. §§ 31-7-133 and 31-7-143, is discoverable. *Cobb County Kennestone Hosp. Auth. v. Martin*, 208 Ga. App. 326, 430 S.E.2d 604 (1993).

Code section not applicable to activity prior to section's effective date. — Legislature did not intend that O.C.G.A. § 31-7-133 should apply to medical review committee (now organization) activity engaged in before effective date of that section even though a discovery request is made after such time; therefore, the legislation relating to records of medical review committees (now organizations) contained in O.C.G.A. Art. 6, Ch. 7, T. 31 does not apply to records of medical review committee (now organization) activity engaged in before that article was enacted. *Hollowell v. Jove*, 247 Ga. 678, 279 S.E.2d 430 (1981).

Information as to whether or not organization meetings held is nondiscoverable. — Since the discovery

of whether any medical review committee (now organization) meetings relating to the care of the decedent were held and who attended the meetings necessitate an intrusion into the "proceedings" of the committee (now organization), such information is nondiscoverable under O.C.G.A. § 31-7-133. *Hollowell v. Jove*, 247 Ga. 678, 279 S.E.2d 430 (1981).

Hospital information regarding decisions to suspend physician's privileges. — In an action involving plaintiff physician's alleged drug usage prior to applying for disability insurance from defendant, information in the possession of hospitals regarding decisions to suspend plaintiff's privileges was shielded from discovery by peer review and medical review statutes. *Doe v. Unum Life Ins. Co. of Am.*, 891 F. Supp. 607 (N.D. Ga. 1995).

Suits challenging the peer review process itself are not exempt from the discovery privileges set forth in O.C.G.A. §§ 31-7-133 and 31-7-143. *Patton v. St. Francis Hosp.*, 246 Ga. App. 4, 539 S.E.2d 526 (2000).

Limited peer review materials were discoverable by a doctor who was reviewed because the Georgia peer review privilege, O.C.G.A. §§ 31-7-133 and 31-7-143, could not be used under Fed. R. Evid. 501 to prevent the doctor from discovering peer review materials that could be relevant to rebut a claimed immunity defense by a clinic and the clinic's doctors. *Adeduntan v. Hosp. Auth. of Clarke County*, No. 3:04-CV-65 (CDL), 2005 U.S. Dist. LEXIS 18281 (M.D. Ga. Aug. 25, 2005).

Section does not infringe rights to due process, equal protection, and access to courts. *Eubanks v. Ferrier*, 245 Ga. 763, 267 S.E.2d 230 (1980) (see O.C.G.A. § 31-7-133).

Use of privilege was proper and did not support award of attorney's fees.

— Claim by a plaintiff, who had unsuccessfully asserted in a claim for attorney fees and costs under O.C.G.A. § 9-15-14 that the peer review privilege under O.C.G.A. § 31-7-133(a) was improperly applied, and who then asserted the same claim against the same parties in an abusive litigation action under O.C.G.A. § 51-7-80 et seq., was barred by collateral estoppel. *Freeman v. Wheeler*, 277 Ga. App. 753, 627 S.E.2d 86 (2006).

Credentialing information not within privilege. — Unless the credentialing information involves the evaluation of the quality and efficiency of actual medical services, the information does not come within the peer review and medical review privileges of O.C.G.A. §§ 31-7-133(a) and 31-7-143. Accordingly, information in a physician's credentialing

files was discoverable to the extent that the information did not involve a peer review or medical review committee's evaluation of actual medical services provided by the physician. *Hosp. Auth. v. Meeks*, 285 Ga. 521, 678 S.E.2d 71 (2009).

Cited in *Campbell v. Wilson*, 143 Ga. App. 656, 239 S.E.2d 546 (1977); *Hollowell v. Jove*, 628 F.2d 513 (5th Cir. 1980).

OPINIONS OF THE ATTORNEY GENERAL

Applicability to trauma advisory committee. — Since the Trauma Advisory Committee for Emergency Medical Services is a review organization consisting of surgeons licensed in the State of Georgia which evaluates care provided by professional health care providers as defined in O.C.G.A. § 31-7-131(2) for the

purposes of improving the quality of care rendered and reducing morbidity and mortality due to trauma, it is a review organization within the meaning of § 31-7-131(3) and is covered by the immunity and confidentiality provisions of O.C.G.A. §§ 31-7-132 and 31-7-133. 1988 Op. Att'y Gen. No. 88-5.

RESEARCH REFERENCES

ALR. — Scope and extent of protection from disclosure of medical peer review

proceedings relating to claim in medical malpractice action, 69 ALR5th 559.

ARTICLE 6A

MEDICAL REVIEW COMMITTEES

Editor's notes. — The provisions contained in Code Sections 31-7-140 through 31-7-143, as enacted by Ga. L. 1983, p. 3, were previously enacted in substantially

similar form by Ga. L. 1975, p. 739 but were not included as part of the original Code enactment (Ga. L. 1981, Ex. Sess., p. 8).

RESEARCH REFERENCES

Am. Jur. Proof of Facts. — Protected Communication Between Physician and Patient, 45 POF2d 595.

31-7-140. "Medical review committee" defined.

As used in this article, the term "medical review committee" means a committee of a state or local professional society or of a medical staff or a licensed hospital, nursing home, medical foundation, or peer review committee, provided the medical staff operates pursuant to written bylaws that have been approved by the governing board of the hospital or nursing home, which committee is formed to evaluate and improve the quality of health care rendered by providers of health service or to determine that health services rendered were professionally indicated or were performed in compliance with the applicable standard of care or

that the cost of health care rendered was considered reasonable by the providers of professional health services in the area. (Ga. L. 1975, p. 739, § 1; Code 1981, § 31-7-140, enacted by Ga. L. 1983, p. 3, § 22.)

JUDICIAL DECISIONS

“Medical review committee” means a “grass roots” committee formed to make in-house examinations of the adequacy of the treatment afforded patients. *Davenport v. Kutner*, 182 Ga. App. 467, 356 S.E.2d 67, rev’d on other grounds, 257 Ga. 456, 360 S.E.2d 586 (1987).

Composite state board of medical examiners is not a “medical review committee” within the meaning of O.C.G.A. § 31-7-140. *Davenport v. Kutner*, 182 Ga. App. 467, 356 S.E.2d 67, rev’d on other grounds, 257 Ga. 456, 360 S.E.2d 586 (1987).

Failure of a medical review committee to strictly adhere to bylaws does not strip the committee of the protection of confidentiality otherwise afforded by O.C.G.A. § 31-7-143. *Patton v. St.*

Francis Hosp., 246 Ga. App. 4, 539 S.E.2d 526 (2000).

Surgical conference organized by a hospital’s chief of staff pursuant to written bylaws for the purpose, in part, to evaluate and improve the quality of health care rendered by members of the vascular surgery staff and to otherwise critique the performance of individual doctors in cases involving that area of medicine, which functioned as an initial, rather than determinative, step in the hospital’s peer review process, was a medical review committee entitled to the confidentiality and privileges of O.C.G.A. § 31-7-143. *Poulnott v. Surgical Assocs.*, 179 Ga. App. 138, 345 S.E.2d 639 (1986).

Cited in *Emory Univ. v. Houston*, 185 Ga. App. 289, 364 S.E.2d 70 (1987).

31-7-141. Committee members immune from liability.

There shall be no monetary liability on the part of and no cause of action for damages shall arise against any member of a duly appointed medical review committee for any act or proceeding undertaken or performed within the scope of the functions of any such committee if the committee member acts without malice or fraud. This immunity shall apply only to actions by providers of health services, and in no way shall this Code section render any medical review committee immune from any action in tort or contract brought by a patient or his successors or assigns. This Code section shall not affect the immunity of an officer or an employee of a public corporation. (Ga. L. 1975, p. 739, § 2; Code 1981, § 31-7-141, enacted by Ga. L. 1983, p. 3, § 22.)

Cross references. — Immunity of persons furnishing information to peer review groups from civil liability, § 31-7-130 et seq.

JUDICIAL DECISIONS

Preemption. — Under O.C.G.A. § 31-7-132(a), a peer reviewer is immune unless the reviewer is motivated by malice toward any person affected by such activity, and under O.C.G.A. § 31-7-141, a medical review committee member is im-

immune if the committee member acts without malice or fraud; to the extent that peer review and medical review immunity are conditioned upon the absence of malice and deception, the statutes are preempted by the Health Care Quality Improvement

Act of 1986, specifically 42 U.S.C. § 11111(a), under which bias is irrelevant. *Patton v. St. Francis Hosp.*, 260 Ga. App. 202, 581 S.E.2d 551 (2003).

Immunity from claims filed by health care providers. — Georgia peer review and medical review statutes, which establish the privilege for the proceedings and records of peer review organizations and medical review committees, also provide for immunity to participants and witnesses in such proceedings under: (1) O.C.G.A. § 31-7-130, which sets forth

the intent of the Georgia General Assembly; (2) O.C.G.A. § 31-7-132(a), which provides immunity from liability for peer review; (3) O.C.G.A. §§ 31-7-133(a) and 31-7-141, which provide immunity for medical review committee members from claims for damages filed by health care providers; and (4) O.C.G.A. § 31-7-143, which provides that peer review and medical review proceedings are both absolutely privileged. *Patton v. St. Francis Hosp.*, 260 Ga. App. 202, 581 S.E.2d 551 (2003).

RESEARCH REFERENCES

ALR. — Tort liability of medical society or professional association for failure to discipline or investigate negligent or oth-

erwise incompetent medical practitioner, 72 ALR4th 1148.

31-7-142. Liability of those providing health care facilities or services.

Code Section 31-7-141 shall not be construed to confer immunity from liability on any professional society or hospital or upon any health professional while performing services other than as a member of a medical review committee. In any case in which, except for this article, a cause of action would arise against a hospital, professional society, or any individual health professional, such cause of action shall exist as if this article had not been enacted. (Ga. L. 1975, p. 739, § 3; Code 1981, § 31-7-142, enacted by Ga. L. 1983, p. 3, § 22.)

31-7-143. Committee proceedings and records immune from discovery or use as evidence in civil actions.

The proceedings and records of medical review committees shall not be subject to discovery or introduction into evidence in any civil action against a provider of professional health services arising out of the matters which are the subject of evaluation and review by such committee; and no person who was in attendance at a meeting of such committee shall be permitted or required to testify in any such civil action as to any evidence or other matters produced or presented during the proceedings of such committee or as to any findings, recommendations, evaluations, opinions, or other actions of such committee or any members thereof. However, information, documents, or records otherwise available from original sources shall not be construed as immune from discovery or use in any such civil action merely because they were presented during proceedings of such committee; nor shall any person who testifies before such committee or who is a member of such

committee be prevented from testifying as to matters within his knowledge, provided that such witness may not be questioned regarding his testimony before such a committee or opinions formed by him as a result of such committee hearings. (Ga. L. 1975, p. 739, § 4; Code 1981, § 31-7-143, enacted by Ga. L. 1983, p. 3, § 22.)

JUDICIAL DECISIONS

Georgia peer review and medical review statutes, which establish the privilege for the proceedings and records of peer review organizations and medical review committees, also provide for immunity to participants and witnesses in such proceedings under: (1) O.C.G.A. § 31-7-130, which sets forth the intent of the Georgia General Assembly; (2) O.C.G.A. § 31-7-132(a), which provides immunity from liability for peer review; (3) O.C.G.A. §§ 31-7-133(a) and 31-7-141, which provide immunity for medical review committee members from claims for damages filed by health care providers; and (4) O.C.G.A. § 31-7-143, which provides that peer review and medical review proceedings are both absolutely privileged. *Patton v. St. Francis Hosp.*, 260 Ga. App. 202, 581 S.E.2d 551 (2003).

Limited peer review materials were discoverable by a doctor who was reviewed because the Georgia peer review privilege, O.C.G.A. §§ 31-7-133 and 31-7-143, could not be used under Fed. R. Evid. 501 to prevent the doctor from discovering peer review materials that could be relevant to rebut a claimed immunity defense by a clinic and the clinic's doctors. *Adeduntan v. Hosp. Auth. of Clarke County*, No. 3:04-CV-65 (CDL), 2005 U.S. Dist. LEXIS 18281 (M.D. Ga. Aug. 25, 2005).

In a case involving the Georgia medical review and peer review statutes, O.C.G.A. §§ 31-7-133(a) and 31-7-143, the trial court erred in determining that nothing in a medical center's credentialing files was subject to discovery because, to the extent that the credentialing process involved a peer review committee's evaluation of a doctor's performance of medical procedures, the information was not discoverable; however, to the extent that there was information in the doctor's credentialing files that did not involve evaluations of the doctor's performance of these procedures,

that information was discoverable. *Hosp. Auth. of Valdosta v. Meeks*, 294 Ga. App. 629, 669 S.E.2d 667 (2008), *aff'd*, 285 Ga. 521, 678 S.E.2d 71 (2009).

Relationship to other privileges. — Georgia law did not allow for a self-critical analysis privilege; the fact that the peer review privilege is limited to review organizations within the healthcare field weighs heavily against extending such privilege to a corporate organization. *Lara v. Tri-State Drilling*, 504 F. Supp. 2d 1323 (N.D. Ga. 2007).

Plaintiffs in a 42 U.S.C. § 1983 action for a death of an inmate were granted a motion to compel disclosure of a morbidity and mortality report generated by a jail medical official and related correspondence and documents under Fed. R. Civ. P. 26 and 37 because the court refused under Fed. R. Evid. 501 to recognize the medical peer review privilege of O.C.G.A. §§ 31-7-133 and 31-7-143 in that the need for probative evidence in a civil rights action outweighed the need for privilege. *Jenkins v. Dekalb County*, 242 F.R.D. 652 (N.D. Ga. 2007).

Malice exception does not apply to the discovery privileges set forth in O.C.G.A. §§ 31-7-133 and 31-7-143. *Patton v. St. Francis Hosp.*, 246 Ga. App. 4, 539 S.E.2d 526 (2000).

Embargo on use of peer review information. — General Assembly has placed an absolute embargo upon the discovery and use of all proceedings, records, findings, and recommendations of peer review groups and medical review committees in civil litigation. The source of peer review information is irrelevant. *Emory Clinic v. Houston*, 258 Ga. 434, 369 S.E.2d 913 (1988).

In a case involving the Georgia medical review and peer review statutes, O.C.G.A. §§ 31-7-133(a) and 31-7-143, the trial court erred in creating additional discov-

ery exceptions not allowed by the statutes because the Georgia General Assembly placed an absolute embargo upon the discovery and use of all proceedings, records, findings, and recommendations of peer review groups and medical review committees in civil litigation. *Hosp. Auth. of Valdosta v. Meeks*, 294 Ga. App. 629, 669 S.E.2d 667 (2008), *aff'd*, 285 Ga. 521, 678 S.E.2d 71 (2009).

Legislative purpose. — Purpose for the enactment of O.C.G.A. § 31-7-143 is to foster the delivery of quality medical services by preserving the candor necessary for the effective functioning of hospital medical review committees; it embraces the goal of medical staff candor at the cost of impairing litigants' access to evidence. *Patton v. St. Francis Hosp.*, 260 Ga. App. 202, 581 S.E.2d 551 (2003).

Failure of a medical review committee to strictly adhere to bylaws does not strip the committee of the protection of confidentiality otherwise afforded by O.C.G.A. § 31-7-143. *Patton v. St. Francis Hosp.*, 246 Ga. App. 4, 539 S.E.2d 526 (2000).

Surgical conference proceedings held privileged and confidential. — See *Poulcott v. Surgical Assocs.*, 179 Ga. App. 138, 345 S.E.2d 639 (1986).

Information obtainable from "original sources," that is, hospital medical records and information within the knowledge of an infection rate nurse, under O.C.G.A. §§ 31-7-133 and 31-7-143, is discoverable. *Cobb County Kennestone Hosp. Auth. v. Martin*, 208 Ga. App. 326, 430 S.E.2d 604 (1993).

O.C.G.A. § 31-7-143 does not prevent disclosure of information, documents, or records otherwise available from original sources because those items were presented during medical review committee proceedings. *Emory Univ. Hosp. v. Sweeney*, 220 Ga. App. 502, 469 S.E.2d 772 (1996).

Information as to hospital's infection rate. — O.C.G.A. §§ 31-7-133 and 31-7-143 did not prevent discovery of recorded data pertaining to hospital's infection incidence because it was factual data from the original hospital records which the infection rate nurse used to compile the information the nurse presented to

the peer review committee. *Cobb County Kennestone Hosp. Auth. v. Martin*, 208 Ga. App. 326, 430 S.E.2d 604 (1993).

Hospital information regarding decisions to suspend physician's privileges. — In an action involving plaintiff physician's alleged drug usage prior to applying for disability insurance from defendant, information in the possession of hospitals regarding decisions to suspend plaintiff's privileges was shielded from discovery by peer review and medical review statutes. *Doe v. Unum Life Ins. Co. of Am.*, 891 F. Supp. 607 (N.D. Ga. 1995).

Credentialing information not within privilege. — Unless the credentialing information involves the evaluation of the quality and efficiency of actual medical services, the information does not come within the peer review and medical review privileges of O.C.G.A. §§ 31-7-133(a) and 31-7-143. Accordingly, information in a physician's credentialing files was discoverable to the extent that the information did not involve a peer review or medical review committee's evaluation of actual medical services provided by the physician. *Hosp. Auth. v. Meeks*, 285 Ga. 521, 678 S.E.2d 71 (2009).

Information incorporated into report of government agency. — Proceedings and records of medical review committees which are not subject to discovery or introduction into evidence under O.C.G.A. § 31-7-143 do not lose their protected status as the result of being disclosed to an authorized public agency or by virtue of the inclusion into its report by such agency. *Emory Univ. Hosp. v. Sweeney*, 220 Ga. App. 502, 469 S.E.2d 772 (1996).

Section inapplicable to those giving negligent tax advice. — There is no viable basis for asserting that the privilege created by O.C.G.A. § 31-7-143 can or should be judicially extended to the internally generated personnel records and evaluations of those who have allegedly given negligent tax advice. *DeLoitte Haskins & Sells v. Green*, 187 Ga. App. 376, 370 S.E.2d 194, *cert. denied*, 187 Ga. App. 907, 370 S.E.2d 194 (1988).

Section inapplicable to federal civil rights actions. — Medical peer review privilege, such as that in O.C.G.A.

§ 31-7-143, did not apply in plaintiff physician’s 42 U.S.C. §§ 1981, 1983 and 1985 racial discrimination case; thus, summary judgment to defendant hospital after limiting discovery of reviews to only the physician’s department was reversed. *Adkins*

v. Christie, 488 F.3d 1324 (11th Cir. 2007), cert. denied, mot. granted, U.S. , 128 S. Ct. 903, 169 L. Ed. 2d 785 (2008).
Cited in *Davenport v. Kutner*, 182 Ga. App. 467, 356 S.E.2d 67 (1987).

RESEARCH REFERENCES

ALR. — Scope and extent of protection from disclosure of medical peer review proceedings relating to claim in medical malpractice action, 69 ALR5th 559.

ARTICLE 7

HOME HEALTH AGENCIES

Administrative rules and regulations. — Home health agencies, Official Compilation of the Rules and Regulations of the State of Georgia, Department of

Human Resources (now the Department of Community Health for these purposes), Public Health, Chapter 290-5-38.

31-7-150. Definitions.

As used in this article, the term:

(1) “Branch office” means a location or site, identified in the application or endorsement thereto, from which a home health agency provides services within a portion of the total geographic area served by the parent agency and which is part of the home health agency and is located sufficiently close to share administration, supervision, and services in a manner that renders it unnecessary for the branch independently to meet the requirements of this article.

(1.1) “Department” means the Department of Community Health.

(2) “Home health agency” means a public, nonprofit, or proprietary organization, whether owned or operated by one or more persons or legal entities, which is engaged in furnishing home health services.

(3) “Home health services” means those items and services furnished to an individual according to a written plan of treatment signed by the patient’s physician, by a home health agency, or by others under arrangement with the home health agency, on a visit or hourly basis, in a place of temporary or permanent residence used as the individual’s home, as follows:

(A) Part-time or intermittent skilled nursing care as ordered by a physician and provided by or under the supervision of a registered nurse and at least one other service listed in subparagraphs (B) through (D) of this paragraph;

(B) Physical, occupational, or speech therapy;

(C) Medical social services; and

(D) Home health aide services.

(4) "License" means a license issued by the department.

(5) "Licensee" means the individual, corporation, or public entity with whom rests the ultimate responsibility for maintaining approved standards for the home health agency.

(6) "Parent home health agency" means the agency that develops and maintains administrative controls of subunits or branch offices.

(7) "Physician" means an individual currently licensed or authorized to practice medicine, surgery, or osteopathy in this state.

(8) "Plan of treatment" means a plan written, signed, and reviewed at least every two months by the patient's physician prescribing items and services for the patient's condition.

(9) "Registered nurse" means an individual who is currently licensed as a registered professional nurse in this state.

(10) "Subunit" means a semiautonomous organization which serves patients in a geographic area different from that of the parent agency and which, by virtue of the distance between it and the parent agency, is judged incapable of sharing administration, supervision, and services on a daily basis with the parent agency and must, therefore, independently meet the licensing requirements for a home health agency and shall be separately licensed. (Ga. L. 1980, p. 1790, § 2; Ga. L. 2008, p. 12, § 2-15/SB 433.)

JUDICIAL DECISIONS

Authority of Department of Medical Assistance (now Department of Community Health) regarding branch office. — Failure of a provider under the Home Health Services Program of the Georgia Medicaid Program to satisfy Department of Medical Assistance (DMA) (now Department of Community Health) regulations governing the geographic location of branch facilities authorized the DMA to disallow reimburse-

ment, even if the federal Health Care Financing Administration and the Department of Human Resources had approved the provider's branch organizational structure. *ABC Home Health Servs., Inc. v. Georgia Dep't of Medical Assistance*, 211 Ga. App. 496, 439 S.E.2d 696 (1993).

Cited in *Tift County Hosp. Auth. v. MRS of Tifton, Ga., Inc.*, 255 Ga. 164, 335 S.E.2d 546 (1985).

31-7-151. License required; license may not be transferred but may be suspended or revoked.

No person, private or public organization, political subdivision, or other governmental agency may operate a home health agency as defined in Code Section 31-7-150 without first obtaining a license from

the department. A license issued under this article is not assignable or transferable and is subject to suspension or revocation at any time for failure to comply with this article. (Ga. L. 1980, p. 1790, § 3.)

31-7-152. Application for license.

Any person, organization, or agency desiring to operate a home health agency shall file with the department an application on a form prescribed, prepared, and furnished by the department. The application shall contain such information as the department may require which is reasonably related to the department's licensure purpose and function. (Ga. L. 1980, p. 1790, § 4.)

31-7-153. Standards for patient care and agency operation; regulations as to issuance, denial, suspension, or revocation of licenses; hearings.

The department shall promulgate regulations which define standards for the care, treatment, health, safety, welfare, and comfort of patients served by home health agencies and for the maintenance and operation of home health agencies which will promote safe and adequate care and treatment of the patients. These regulations shall be no less stringent than those required for participation of home health agencies in the Title XVIII medicare program and shall include, but not be limited to, a provision requiring the agency to have policies established by a professional group which includes at least one physician and one registered nurse and appropriate representation from other professional disciplines; provisions governing the services the agency provides; provisions for the supervision of services by a physician or registered nurse, as appropriate, and maintenance of clinical records on all patients, including a plan of treatment prescribed by a physician. The department is authorized to issue, deny, suspend, or revoke licenses in accordance with regulations promulgated pursuant to this Code section. Such regulations shall also include hearing procedures related to denial, suspension, or revocation of licenses. (Ga. L. 1980, p. 1790, § 5; Ga. L. 1985, p. 149, § 31.)

U.S. Code. — Title XVIII, referred to in this Code section, is Title XVIII of the federal Social Security Act and is codified as 42 U.S.C. § 1395 et seq.

31-7-154. Inspections.

Each home health agency for which a license has been issued shall be periodically inspected by an authorized representative of the department. Such inspections shall be for the purpose of ensuring that this article is being followed. The department is directed to ensure by inspection that the licensee is providing quality care to its patients in

accordance with the orders of the patient's physician; provided, however, that an agency shall be exempt from an additional on-site licensure inspection if certified in a federal program for reimbursement of medicare or Medicaid services. (Ga. L. 1980, p. 1790, § 6.)

31-7-155. Certificates of need for new service or extending service area; exemption from certificate.

(a) No home health agency initiating service or extending the range of its service area shall be licensed unless the department determines, in accordance with Article 3 of Chapter 6 of this title and regulations pursuant thereto, that there is a need for said services within the area to be served. All home health agencies which were delivering services prior to July 1, 1979, and were certified for participation in either Title XVIII or Title XIX of the federal Social Security Act prior to such date shall be exempt from a certificate of need, except in those instances where expansion of services or service areas is requested by such home health agencies. Such exemption from a certificate of need shall extend to all areas in which a home health agency was licensed by the department to provide services on or before December 31, 1989, except as provided in subsection (b) of this Code section.

(b) Concerning an exemption from a certificate of need pursuant to subsection (a) of this Code section, service areas which were the subject of litigation pending in any court of competent jurisdiction, whether by way of appeal, remand, stay, or otherwise, as of December 31, 1989, shall not be so exempt except as set forth in the final unappealed administrative or judicial decision rendered in such litigation.

(c) Except with respect to a home health agency's service areas which were the subject of litigation pending in any court of competent jurisdiction as of December 31, 1989, the department shall not consider any request for or issue a determination of an exemption from a certificate of need pursuant to this Code section after December 31, 1989. (Ga. L. 1980, p. 1790, § 8; Ga. L. 1990, p. 378, § 1; Ga. L. 1999, p. 296, § 22; Ga. L. 2008, p. 12, § 2-16/SB 433.)

Cross references. — Powers and duties of counties relating to support of paupers, T. 36, C. 12.

U.S. Code. — Titles XVIII and XIX of

the federal Social Security Act, referred to in this Code section, are codified as 42 U.S.C. §§ 1395 et seq. and 1396 et seq., respectively.

JUDICIAL DECISIONS

Grandfather status not acquired. — O.C.G.A. § 31-7-155 did not authorize a determination by the State Health Planning Agency (now Department of Community Health) that agencies which had not

been servicing the geographic areas at issue prior to July 1, 1979, had nevertheless acquired grandfather status in such areas because the agencies would have been providing services there prior to such

date had it not been for misdirection on the part of certain employees of the Department of Human Resources (now the Department of Community Health for these purposes). *Chattahoochee Valley Home Health Care, Inc. v. Healthmaster,*

Inc., 191 Ga. App. 42, 381 S.E.2d 56, grant of cert. vacated, *Healthmaster, Inc. v. Chattahoochee Valley Home Health Care, Inc.*, 259 Ga. 387, 385 S.E.2d 290 (1989), cert. denied, 493 U.S. 1079, 110 S. Ct. 1132, 107 L. Ed. 2d 1037 (1990).

31-7-156. Fee system for services under this article.

The department is authorized to establish by standards and policies a fee system which will be applied to all services under this article in order to defray the actual expenses which are incurred by discharging the obligations of this article. (Ga. L. 1980, p. 1790, § 9.)

31-7-157. Exemptions from article.

This article shall not apply to services which are provided under the following conditions:

- (1) Personal or paraprofessional health services provided either with or without compensation when there is no claim that the service is provided as a part of a licensed home health agency;
- (2) Professional services provided by persons who are duly licensed for such services under Georgia laws when there is no claim that the service is provided as a part of a licensed home health agency; or
- (3) Services provided under any other license issued by the state when there is no claim that the service is provided as a part of a licensed or certified home health agency. (Ga. L. 1980, p. 1790, § 1.)

31-7-158. Penalties for unlicensed operation.

Any person who operates a home health agency without first obtaining a license pursuant to this article shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed \$500.00 or imprisoned for a period not to exceed six months, or both. (Ga. L. 1980, p. 1790, § 7.)

31-7-159. Licensure and regulation of home health agencies transferred to Department of Community Health.

(a) Effective July 1, 2009, all matters relating to the licensure and regulation of home health agencies pursuant to this article shall be transferred from the Department of Human Resources (now known as the Department of Human Services) to the Department of Community Health.

(b) The Department of Community Health shall succeed to all rules, regulations, policies, procedures, and administrative orders of the

Department of Human Resources that are in effect on June 30, 2009, or scheduled to go into effect on or after July 1, 2009, and which relate to the functions transferred to the Department of Community Health pursuant to this Code section and shall further succeed to any rights, privileges, entitlements, obligations, and duties of the Department of Human Resources that are in effect on June 30, 2009, which relate to the functions transferred to the Department of Community Health pursuant to this Code section. Such rules, regulations, policies, procedures, and administrative orders shall remain in effect until amended, repealed, superseded, or nullified by the Department of Community Health by proper authority or as otherwise provided by law.

(c) The rights, privileges, entitlements, and duties of parties to contracts, leases, agreements, and other transactions entered into before July 1, 2009, by the Department of Human Resources which relate to the functions transferred to the Department of Community Health pursuant to this Code section shall continue to exist; and none of these rights, privileges, entitlements, and duties are impaired or diminished by reason of the transfer of the functions to the Department of Community Health. In all such instances, the Department of Community Health shall be substituted for the Department of Human Resources, and the Department of Community Health shall succeed to the rights and duties under such contracts, leases, agreements, and other transactions.

(d) All persons employed by the Department of Human Resources in capacities which relate to the functions transferred to the Department of Community Health pursuant to this Code section on June 30, 2009, shall, on July 1, 2009, become employees of the Department of Community Health in similar capacities, as determined by the commissioner of community health. Such employees shall be subject to the employment practices and policies of the Department of Community Health on and after July 1, 2009, but the compensation and benefits of such transferred employees shall not be reduced as a result of such transfer. Employees who are subject to the rules of the State Personnel Board and who are transferred to the department shall retain all existing rights under such rules. Retirement rights of such transferred employees existing under the Employees' Retirement System of Georgia or other public retirement systems on June 30, 2009, shall not be impaired or interrupted by the transfer of such employees and membership in any such retirement system shall continue in the same status possessed by the transferred employees on June 30, 2009. Accrued annual and sick leave possessed by said employees on June 30, 2009, shall be retained by said employees as employees of the Department of Community Health. (Code 1981, § 31-7-159, enacted by Ga. L. 2008, p. 12, § 2-17/SB 433; Ga. L. 2009, p. 453, § 1-30/HB 228; Ga. L. 2009, p. 745, § 2/SB 97; Ga. L. 2012, p. 446, § 2-38/HB 642.)

The 2012 amendment, effective July 1, 2012, in subsection (d), in the third sentence, deleted “and thereby under the State Personnel Administration” following “State Personnel Board” and substituted “under such rules” for “under the State Personnel Administration”.

Editor’s notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: “Personnel, equipment, and facilities that were assigned to the State Personnel Administra-

tion as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act.” This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: “Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90.”

ARTICLE 8

HEALTH SERVICE PROVIDER PSYCHOLOGISTS

Editor’s notes. — Ga. L. 1983, p. 1426, § 1, not codified by the General Assembly, provides: “The General Assembly finds and declares that treatment of psychological problems of persons residing within the community would in some cases be advanced by temporary hospitalization. The interests of the people of this state demand that all appropriate resources, including inpatient facilities, be available to assist in the diagnosis, prevention, treatment, and amelioration of psychological problems and emotional and mental disorders. The General Assembly recognizes that psychology is an independent health profession as set forth and pre-

scribed by the State Board of Examiners of Psychologists and Chapter 39 of Title 43 of the Official Code of Georgia Annotated. It is therefore the intent of the General Assembly, in enacting this Act, to authorize medical facilities and institutions, on local determination, to make psychological services available in an inpatient setting.”

Administrative rules and regulations. — Rules and regulations for hospices, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Human Resources, Office of Regulatory Services, Chapter 290-9-43.

31-7-160. Definitions.

As used in this article, the term:

(1) “Health service provider psychologist” means a licensed psychologist who meets the criteria of training and experience as provided in Code Section 31-7-162 in the delivery of direct, preventive, assessment and therapeutic intervention services to individuals whose growth, adjustment, or functioning is actually impaired or is demonstrably at a high risk of impairment.

(2) “Psychologist’s order” means an order issued by a health service provider psychologist practicing psychology in accordance with Chapter 39 of Title 43 for the care and treatment rendered to a person in a medical facility or institution, including admission and discharge. Such care and treatment does not include the ordering or prescribing of medications, nursing assessments or interventions, or medical procedures. (Code 1981, § 31-7-160, enacted by Ga. L. 1983, p. 1426, § 2; Ga. L. 1997, p. 911, § 2.)

JUDICIAL DECISIONS

Cited in *In re M.D.*, 244 Ga. App. 156,
534 S.E.2d 889 (2000).

31-7-161. Appointment to staff of medical facility or institution.

(a) A medical facility or institution may provide for the appointment of health service provider psychologists on such terms and conditions as the medical facility or institution shall establish. Psychologists shall be eligible to hold membership and serve on committees of the medical or professional staff and may possess clinical privileges and carry professional responsibilities consistent with the scope of their licensure and their competence, subject to the reasonable rules of the medical facility or institution. Such privileges and responsibilities may include issuing a psychologist's order. A physician shall be designated to be responsible for the medical aspects of care for a patient admitted by a psychologist.

(b) Notwithstanding any other provision of law:

(1) A health service provider psychologist is authorized to issue a psychologist's order to a registered professional nurse or a licensed practical nurse; and

(2) A registered professional nurse and a licensed practical nurse shall have the authority to execute a psychologist's order, provided that a registered professional nurse or licensed practical nurse may confer with the health service provider psychologist prior to executing the psychologist's order. Nothing contained in this article shall be deemed to alter the standard of care of the registered professional nurse or the licensed practical nurse applicable to the evaluation and execution of orders, including a psychologist's order. (Code 1981, § 31-7-161, enacted by Ga. L. 1983, p. 1426, § 2; Ga. L. 1997, p. 911, § 3.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1997, "psychologist's" was substituted for "psychologists's" in the second sentence of paragraph (b)(2).

31-7-162. Training and experience requirements.

A health service provider psychologist shall meet the following criteria of training and experience:

(1) The psychologist must be currently licensed by the State Board of Examiners of Psychologists;

(2) The psychologist must be eligible to be listed in the National Register of Health Service Providers of Psychology or have completed not less than two years, with 1,500 hours each year, of supervised

experience in health service of which at least one year is post doctoral and one year, which may be the post doctoral year, is in an organized health service training program;

(3) A substantial portion of the supervised experience must be in an inpatient setting; and

(4) Two supportive letters of recommendation from health service providers in psychology who are familiar with the applicant's work must be submitted to the medical facility or institution. (Code 1981, § 31-7-162, enacted by Ga. L. 1983, p. 1426, § 2.)

31-7-163. Status of present psychologist staff members.

Nothing in this article shall prohibit a psychologist currently a member of a hospital staff or an employee of a hospital from continuing to work in that capacity. (Code 1981, § 31-7-163, enacted by Ga. L. 1983, p. 1426, § 2.)

31-7-164. Limitation or revocation of staff privileges.

Notwithstanding any other provision of this article, the exercise of privileges in any medical facility or institution may be limited, restricted, or revoked for reasons including, but not limited to, the violation of such medical facility's or institution's rules, regulations, or procedures which are applied, in good faith, in a nondiscriminatory manner to all practitioners in such medical facility or institution exercising such privileges or entitled to exercise such privileges. (Code 1981, § 31-7-164, enacted by Ga. L. 1983, p. 1426, § 2.)

Cross references. — Peer review groups for psychologists, § 31-7-130 et seq.

31-7-165. Report of denial of staff privileges.

When any health service provider psychologist is denied staff privileges or is removed from the medical or professional staff, such action shall be reported by the facility to the State Board of Examiners of Psychologists. (Code 1981, § 31-7-165, enacted by Ga. L. 1983, p. 1426, § 2.)

ARTICLE 9

HOSPICE CARE

Editor's notes. — Ga. L. 1984, p. 22, § 31, effective February 3, 1984, redesignated former Article 8 as present Article 9 to correct a duplication in article designations. **Administrative rules and regula-**

tions. — Hospice emergency drug kits, State Board of Pharmacy, Nursing Homes, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Long Term Care Facilities and Hospice Emergency Drug Kits, Sec. 480-24-.07.

31-7-170. Short title.

This article shall be known and may be cited as the “Georgia Hospice Law.” (Code 1981, § 31-7-170, enacted by Ga. L. 1983, p. 1317, § 2.)

31-7-171. Legislative findings and purpose.

(a) The General Assembly finds that there is an interest in and need for hospice care, an alternative form of health care, for terminally ill patients and their families. The General Assembly further finds that hospice care is an important innovation which should be recognized and encouraged.

(b) Recognizing that hospice programs respond to the need for responsible, compassionate, palliative care for terminally ill persons and for their families, extending into the bereavement period, this General Assembly establishes definitions, standards, and provisions for licensure and regulation for hospice programs in this state. (Code 1981, § 31-7-171, enacted by Ga. L. 1983, p. 1317, § 2.)

31-7-172. Definitions.

As used in this article, the term:

(1) “Advanced and progressive disease” means a serious life-threatening medical condition which is irreversible and which will continue indefinitely, where there is no reasonable hope of recovery, but where the patient’s medical prognosis is one in which there is a life expectancy of up to two years. This term does not include terminally ill patients as defined in paragraph (12) of this Code section.

(2) “Bereavement services” means the supportive services provided to the family unit to assist it in coping with the patient’s death, including follow-up assessment and assistance through the first year after death.

(3) “Department” means the Department of Community Health.

(4) “Health care facility” means hospitals; other special care units, including but not limited to podiatric facilities; skilled nursing facilities; intermediate care facilities; assisted living communities; personal care homes; ambulatory surgical or obstetrical facilities; health maintenance organizations; home health agencies; and diagnostic, treatment, or rehabilitation centers.

(5) "Hospice" means a public agency or private organization or unit of either providing to persons terminally ill and to their families, regardless of ability to pay, a centrally administered and autonomous continuum of palliative and supportive care, directed and coordinated by the hospice care team primarily in the patient's home but also on an outpatient and short-term inpatient basis and which is classified as hospice by the department. In addition, such public agency or private organization or unit of either may also provide palliative care to persons with advanced and progressive diseases and to their families, directed and coordinated by the hospice care team.

(6) "Hospice care" means both regularly scheduled care and care available on a 24 hour on-call basis, consisting of medical, nursing, social, spiritual, volunteer, and bereavement services substantially all of which are provided to the patient and to the patient's family regardless of ability to pay under a written care plan established and periodically reviewed by the patient's attending physician, by the medical director of the hospice program, and by the hospice care team.

(7) "Hospice care team" means an interdisciplinary working unit composed of members of the various helping professions (who may donate their professional services), including but not limited to: a physician licensed or authorized to practice in this state, a registered professional nurse, a social worker, a member of the clergy or other counselor, and volunteers who provide hospice care.

(8) "Hospice patient family unit" means the terminally ill person or person with an advanced and progressive disease and his or her family, which may include spouse, children, siblings, parents, and other relatives with significant personal ties to the patient.

(9) "License" means a license issued by the department.

(10) "Palliative care" means those interventions by the hospice care team which are intended to alleviate suffering and to achieve relief from, reduction of, or elimination of pain and of other physical, emotional, social, or spiritual symptoms of distress to achieve the best quality of life for the patients and their families.

(11) "Patient" means a terminally ill individual receiving the hospice continuum of services, regardless of ability to pay, and also means an individual with an advanced and progressive disease.

(12) "Terminally ill" means that the individual is experiencing an illness for which therapeutic intervention directed toward cure of the disease is no longer appropriate, and the patient's medical prognosis is one in which there is a life expectancy of six months or less. (Code 1981, § 31-7-172, enacted by Ga. L. 1983, p. 1317, § 2; Ga. L. 2006,

p. 1055, § 1/HB 1008; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 227, § 16/SB 178.)

The 2011 amendment, effective July 1, 2011, inserted “assisted living communities;” in paragraph (4).

Editor’s notes. — Ga. L. 2006, p. 1055, § 2A/HB 1008, not codified by the General Assembly, provides: “This Act shall become effective only if funds are specifically appropriated for purposes of this Act in an

appropriations Act making specific reference to this Act and shall become effective when funds so appropriated become available for expenditure.” Funds were appropriated in the 2006 session of the General Assembly and became available for expenditure on July 1, 2006.

31-7-173. License required.

No person, private or public organization, political subdivision, or other governmental agency may operate a hospice as defined in Code Section 31-7-172 without first obtaining license from the department. A license issued under this article is not assignable or transferable and must be separate from any existing license and is subject to suspension or revocation at any time for failure to comply with the provisions of this article or with the appropriate regulations promulgated by the department. (Code 1981, § 31-7-173, enacted by Ga. L. 1983, p. 1317, § 2.)

31-7-174. Application for license.

Any person, organization, or agency desiring to operate a hospice shall file with the department an application on a form prescribed and furnished by the department. The application shall contain such reasonable information as the department may require related to the department’s licensure purpose and function. (Code 1981, § 31-7-174, enacted by Ga. L. 1983, p. 1317, § 2.)

31-7-175. Administration of article.

(a) The administration of this article is vested in the Department of Community Health which shall:

(1) Prepare and furnish all forms necessary under the provisions of this article in relation to the application for licensure or renewals thereof;

(2) After consultation with appropriate public interest groups, adopt rules within the standards of this article necessary to effect the purposes of this article; and

(3) Establish comprehensive rules and regulations for the licensure of hospices.

(b) Rules promulgated by the department shall include but not be limited to the following:

- (1) The qualifications of professional and ancillary personnel in order to furnish adequate hospice care;
- (2) Comprehensive standards for the organization and quality of patient care;
- (3) Procedures for maintaining records;
- (4) Comprehensive standards for inpatient facilities, to include specifications that the hospice retain primary responsibility for the coordination of inpatient hospice care;
- (5) Provision for contractual arrangements for professional and ancillary hospice services; and
- (6) Provisions for the imposition of administrative fines for any violations of any provisions of this article or of department rules or regulations. (Code 1981, § 31-7-175, enacted by Ga. L. 1983, p. 1317, § 2; Ga. L. 2008, p. 12, § 2-18/SB 433; Ga. L. 2009, p. 453, § 1-4/HB 228.)

31-7-176. Responsibilities of provider of hospice care.

(a) The hospice care program shall coordinate its services with those of the patient's primary or attending physicians, and may contract out for elements of services rendered to the patient and family unit, but not for the basic hospice care services, provided by physicians, attending nurses, and counselors. The hospice care team shall be responsible for coordination of inpatient, outpatient, and home care aspects of care.

(b) Hospice services must meet all applicable definitions provided for in Code Section 31-7-172.

(c) A hospice program of care shall not impose the dictates of any value or belief system on its patients and their family units.

(d)(1) Notwithstanding any inconsistent provision of this article to the contrary, a hospice may, in addition to providing care to terminally ill individuals, also provide palliative care for patients with advanced and progressive diseases and for their families. Such care may be provided by a hospice acting alone or under contract with a health care facility.

(2) Nothing in this subsection shall prevent the provision of palliative care for patients with advanced and progressive diseases and for their families by any other health care provider otherwise authorized to provide such care. (Code 1981, § 31-7-176, enacted by Ga. L. 1983, p. 1317, § 2; Ga. L. 2006, p. 1055, § 2/HB 1008.)

Editor's notes. — Ga. L. 2006, p. 1055, § 2A/HB 1008, not codified by the General Assembly, provides: "This Act shall become effective only if funds are specifically appropriated for purposes of this Act in an appropriations Act making specific refer-

ence to this Act and shall become effective when funds so appropriated become available for expenditure." Funds were appropriated in the 2006 session of the General Assembly and became available for expenditure on July 1, 2006.

31-7-176.1. Determination or pronouncement of death.

When a patient who is terminally ill or whose death is anticipated and who is receiving hospice care from a licensed hospice dies, a registered professional nurse licensed in this state and employed by such hospice at the time of apparent death of such person, in the absence of an attending physician, may make the determination and pronouncement of the death of said patient; provided, however, that, when a hospice patient is a registered organ donor, only a physician may make the determination or pronouncement of death. Such determination or pronouncement shall be made in writing on a form approved by the commissioner of community health. (Code 1981, § 31-7-176.1, enacted by Ga. L. 1992, p. 1392, § 2; Ga. L. 2009, p. 453, § 1-6/HB 228.)

Law reviews. — For note on the 1992 enactment of this Code section, see 9 Ga. St. U.L. Rev. 265 (1992).

31-7-177. Inpatient beds.

Since hospice care is primarily provided at home, licensure shall not be determined solely on the number of inpatient beds needed for service. Inpatient beds under contract to a hospice program may be used by the hospice when needed but may remain otherwise available to the inpatient unit at other times without a change in licensing. (Code 1981, § 31-7-177, enacted by Ga. L. 1983, p. 1317, § 2.)

31-7-178. Inspection.

The department shall periodically inspect each hospice for which a license has been issued to ensure that the licensee is providing quality care to its patients; provided, however, that a hospice shall be exempt from additional on-site licensure inspection if certified in accordance with federal regulations governing hospices. (Code 1981, § 31-7-178, enacted by Ga. L. 1983, p. 1317, § 2; Ga. L. 1991, p. 94, § 31.)

31-7-179. Certificate of need not required.

Where a hospice has obtained a license from the department, there shall be no requirement that the hospice obtain a certificate of need in

order to provide any hospice care. (Code 1981, § 31-7-179, enacted by Ga. L. 1983, p. 1317, § 2.)

ARTICLE 10

HOSPITAL FINANCING AUTHORITY

31-7-190 through 31-7-208.

Reserved. Repealed by Ga. L. 1993, p. 738, § 19, effective April 9, 1993.

Editor's notes. — This article was based on Ga. L. 1984, p. 1654, § 1; Ga. L. 1985, p. 149, § 31; Ga. L. 1986, p. 1519, §§ 1-5; Ga. L. 1987, p. 3, § 31; Ga. L. 1990, p. 894, §§ 1-11; Ga. L. 1991, p. 94, § 31; and Ga. L. 1992, p. 1323, §§ 1, 1.5, 2.

ARTICLE 11

FACILITY LICENSING AND EMPLOYEE RECORDS CHECKS

Cross references. — Records check requirements for licensing of personal care homes, private home care providers, community living arrangements, and child welfare agencies, § 49-2-14.1.

Administrative rules and regulations. — Schedule of fees for fingerprint records check, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Human Re-

sources (now the Department of Community Health for these purposes), Administration, Chapter 290-1-5.

Enforcement of licensing requirements, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Human Resources (now the Department of Community Health for these purposes), Administration, Chapter 290-1-6.

31-7-250. Definitions.

As used in this article, the term:

(1) "Conviction" means a finding or verdict of guilty or a plea of guilty regardless of whether an appeal of the conviction has been sought.

(2) "Crime" means commission of any of the following offenses:

(A) A violation of Code Section 16-5-21, relating to aggravated assault;

(B) A violation of Code Section 16-5-24, relating to aggravated battery;

(C) A violation of Code Section 16-6-1, relating to rape;

(D) A felony violation of Code Section 16-8-2, relating to theft by taking;

(E) A felony violation of Code Section 16-8-3, relating to theft by deception;

(F) A felony violation of Code Section 16-8-4, relating to theft by conversion;

(G) A felony violation of Code Section 16-9-1;

(H) A violation of Code Section 16-5-1, relating to murder and felony murder;

(I) A violation of Code Section 16-4-1, relating to criminal attempt as it concerns attempted murder;

(J) A violation of Code Section 16-8-40, relating to robbery;

(K) A violation of Code Section 16-8-41, relating to armed robbery;

(L) A violation of Chapter 13 of Title 16, relating to controlled substances;

(M) A violation of Code Section 16-5-23.1, relating to battery;

(N) A violation of Code Section 16-6-5.1, relating to sexual assault against a person in custody;

(O) A violation of Code Section 30-5-8, relating to abuse, neglect, or exploitation of a disabled adult or elder person;

(P) Any other offense committed in another jurisdiction which, if committed in this state, would be deemed to be such a crime without regard to its designation elsewhere; or

(Q) Any other criminal offense as determined by the department and established by rule adopted pursuant to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," that would indicate the unfitness of an individual to provide care to or be in contact with persons residing in a facility.

(3) "Criminal record" means any of the following:

(A) Conviction of a crime;

(B) Arrest, charge, and sentencing for a crime where:

(i) A plea of nolo contendere was entered to the charge;

(ii) First offender treatment without adjudication of guilt pursuant to the charge was granted; or

(iii) Adjudication or sentence was otherwise withheld or not entered on the charge; or

(C) Arrest and being charged for a crime if the charge is pending, unless the time for prosecuting such crime has expired pursuant to Chapter 3 of Title 17.

(3.1) “Department” means the Department of Community Health.

(4) “Director” means the chief administrative or executive officer or manager.

(5) “Employee” means any person, other than a director, utilized by a personal care home to provide personal services to any resident on behalf of the personal care home or to perform at any facilities of the personal care home any duties which involve personal contact between that person and any paying resident of the personal care home.

(6) “Facility” means real property of a personal care home where residents reside.

(7) “Fingerprint records check determination” means a satisfactory or unsatisfactory determination by the department based upon a records check comparison of GCIC information with fingerprints and other information in a records check application.

(8) “GCIC” means the Georgia Crime Information Center established under Article 2 of Chapter 3 of Title 35.

(9) “GCIC information” means criminal history record information as defined in Code Section 35-3-30.

(10) “License” means the permit or document issued by the department to authorize the personal care home to which it is issued to operate a facility under this chapter.

(11) “Personal care home” or “home” means a home required to be licensed or permitted under Code Section 31-7-12 or an assisted living community as defined in Code Section 31-7-12.2.

(11.1) “Personal services” includes, but is not limited to, individual assistance with or supervision of self-administered medication and essential activities of daily living such as eating, bathing, grooming, dressing, and toileting.

(12) “Preliminary records check application” means an application for a preliminary records check determination on forms provided by the department.

(13) “Preliminary records check determination” means a satisfactory or unsatisfactory determination by the department based only upon a comparison of GCIC information with other than fingerprint information regarding the person upon whom the records check is being performed.

(14) “Records check application” means two sets of classifiable fingerprints, a records search fee to be established by the department by rule and regulation, payable in such form as the department may direct to cover the cost of a fingerprint records check under this

article, and an affidavit by the applicant disclosing the nature and date of any arrest, charge, or conviction of the applicant for the violation of any law, except for motor vehicle parking violations, whether or not the violation occurred in this state, and such additional information as the department may require.

(15) “Regular license” means a permit which will remain in effect for the personal care home, until and unless the facility ceases to operate or revocation proceedings are commenced.

(16) “Satisfactory determination” means a written determination that a person for whom a records check was performed was found to have no criminal record.

(17) “Temporary license” means a provisional permit which expires six months or 12 months from the date of issuance, unless extended for good cause by the department.

(18) “Unsatisfactory determination” means a written determination that a person for whom a records check was performed has a criminal record. (Code 1981, § 31-7-250, enacted by Ga. L. 1985, p. 952, § 2; Ga. L. 1986, p. 822, § 1; Ga. L. 1994, p. 1359, § 1; Ga. L. 2002, p. 942, § 1; Ga. L. 2008, p. 12, § 2-19/SB 433; Ga. L. 2011, p. 227, § 17/SB 178; Ga. L. 2012, p. 351, § 4/HB 1110; Ga. L. 2012, p. 899, § 8-12/HB 1176.)

The 2011 amendment, effective July 1, 2011, added “or an assisted living community as defined in Code Section 31-7-12.2” at the end of paragraph (11).

The 2012 amendments. — The first 2012 amendment, effective July 1, 2012, in paragraph (2), deleted “or” at the end of subparagraph (O), substituted “; or” for the period at the end of subparagraph (P), and added subparagraph (Q). The second 2012 amendment, effective July 1, 2012, substituted the present provisions of subparagraph (2)(G) for the former provisions, which read: “A violation of Code Section 16-9-1 or 16-9-2, relating to forgery in the first and second degree, respectively;”.

Editor’s notes. — Ga. L. 2012, p. 899, § 9-1(a)/HB 1176, not codified by the General Assembly, provides: “This Act shall become effective on July 1, 2012, and shall apply to offenses which occur on or after that date. Any offense occurring before July 1, 2012, shall be governed by the statute in effect at the time of such offense and shall be considered a prior conviction for the purpose of imposing a sentence that provides for a different penalty for a subsequent conviction for the same type of offense, of whatever degree or level, pursuant to this Act.”

31-7-251. New facility licensing; facility directors.

On and after July 1, 1985, an applicant for a new license shall have a separate license for each new facility in this state owned or operated by that applicant and shall have a separate director for each such facility. (Code 1981, § 31-7-251, enacted by Ga. L. 1985, p. 952, § 2.)

31-7-252. Director records check applications and employee preliminary records check applications; satisfactory alternative evidence; contracts for records check determinations.

Accompanying any application for a new license for a facility, the applicant shall furnish to the department a records check application and a preliminary records check application for the director of such facility. In lieu of such records check applications, the applicant may submit evidence, satisfactory to the department, that within the immediately preceding 12 months the director received a satisfactory fingerprint records check determination. The department shall contract either with GCIC or other appropriate law enforcement agencies which have access to GCIC information to perform itself or have those agencies perform for the department a preliminary records check for each records check application submitted thereto by the department; and the department shall make a written determination based upon that records check. (Code 1981, § 31-7-252, enacted by Ga. L. 1985, p. 952, § 2; Ga. L. 2002, p. 942, § 2.)

31-7-253. Written notification as to department's preliminary records check determinations; effect of unsatisfactory determinations; issuance of temporary licenses.

After being furnished the required records check applications under Code Section 31-7-252, the department shall notify in writing the license applicant as to each person for whom an application was received regarding whether the department's determination as to that person's preliminary records check was satisfactory or unsatisfactory. If the preliminary records check determination was satisfactory as to the director of the facility, that applicant may be issued a temporary license for that facility if the applicant otherwise qualifies for a license under Article 1 of this chapter. If the determination was unsatisfactory as to the director of the facility, the applicant shall designate another director for that facility after receiving notification of the determination and proceed under Code Section 31-7-252 and this Code section to obtain a preliminary records check for that newly designated director. The applicant may not be issued a temporary license for that facility until the department has determined under the procedures of Code Section 31-7-252 and this Code section that the director has a satisfactory preliminary records check determination. (Code 1981, § 31-7-253, enacted by Ga. L. 1985, p. 952, § 2; Ga. L. 1991, p. 94, § 31; Ga. L. 2002, p. 942, § 3.)

31-7-254. Transmission of director's fingerprints to Georgia Crime Information Center for review; notification to department of findings.

After issuing a temporary license based upon a satisfactory preliminary records check determination of the director under Code Section 31-7-253, the department shall transmit to GCIC both sets of fingerprints and the records search fee from that director's records check application. Upon receipt thereof, GCIC shall promptly transmit one set of fingerprints to the Federal Bureau of Investigation for a search of bureau records and an appropriate report and shall retain the other set and promptly conduct a search of its records and records to which it has access. Within 75 days after receiving fingerprints acceptable to GCIC, the application, and fee, GCIC shall notify the department in writing of any derogatory finding, including but not limited to any criminal record, of the fingerprint records check or if there is no such finding. (Code 1981, § 31-7-254, enacted by Ga. L. 1985, p. 952, § 2; Ga. L. 2002, p. 942, § 4.)

31-7-255. Issuance of regular licenses.

After receiving a GCIC notification regarding a director's fingerprint records check under Code Section 31-7-254, the department shall make a determination based thereon and notify in writing the license applicant as to whether that records check was satisfactory or unsatisfactory. If the fingerprint records check determination was satisfactory as to the director of the facility, that applicant may be issued a regular license for that facility. If the fingerprint records check determination was unsatisfactory as to the director of the facility, after receiving notification of that determination, that applicant shall designate another director for such facility, for which director the applicant has not received or made an unsatisfactory preliminary or fingerprint records check determination, and proceed under the requirements of Code Sections 31-7-252 through 31-7-254 and this Code section to obtain a preliminary records check and fingerprint records check determination for the newly designated director. The applicant may not be issued a regular license for that facility until the director has a satisfactory fingerprint records check determination. (Code 1981, § 31-7-255, enacted by Ga. L. 1985, p. 952, § 2; Ga. L. 1991, p. 94, § 31; Ga. L. 2002, p. 942, § 5.)

31-7-256. Expiration of facility licenses issued prior to July 1, 1985; issuance of temporary or regular licenses.

Reserved. Repealed by Ga. L. 2002, p. 942, § 6, effective July 1, 2002.

Editor's notes. — This Code section was based on Code 1981, § 31-7-256, enacted by Ga. L. 1985, p. 952, § 2.

31-7-257. Procedure upon issuance of temporary licenses.

Reserved. Repealed by Ga. L. 2002, p. 942, § 7, effective July 1, 2002.

Editor's notes. — This Code section was based on Code 1981, § 31-7-257, enacted by Ga. L. 1985, p. 952, § 2.

31-7-258. Change of facility director; notification to department; effect of department determination.

(a) If the director of a facility which has been issued a regular license ceases to be the director of that facility, the licensee shall thereupon designate a new director. After such change, the licensee of that facility shall notify the department of such change and of any additional information the department may require regarding the newly designated director of that facility. Such information shall include but not be limited to any information the licensee may have regarding preliminary or fingerprint records check determinations regarding that director. After receiving a change of director notification, the department shall make a written determination from the information furnished with such notification and the department's own records as to whether a satisfactory or unsatisfactory preliminary or fingerprint records check determination has ever been made for the newly designated director. If the department determines that such director within 12 months prior thereto has had a satisfactory fingerprint records check determination, such determination shall be deemed to be a satisfactory fingerprint records check determination as to that director. The license of that facility shall not be adversely affected by that change in director and the licensee shall be so notified.

(b) If the department determines under subsection (a) of this Code section that there has ever been an unsatisfactory preliminary or fingerprint records check determination of the newly designated director, the personal care home and that director shall be notified thereof. The license for that director's facility shall be indefinitely suspended unless the personal care home designates another director for whom it has not received or made an unsatisfactory preliminary or fingerprint records check determination and proceeds pursuant to the provisions of this Code section relating to a change of director.

(c) If the department determines under subsection (a) of this Code section that there has been no fingerprint records check determination regarding the newly designated director within the immediately preceding 12 months, the department shall so notify the personal care

home. The personal care home shall furnish to the department the records check application of the newly designated director or the license of that facility shall be indefinitely suspended. If that records check application is so received, unless the department has within the immediately preceding 12 months made a satisfactory preliminary records check determination regarding the newly designated director, the department shall perform a preliminary records check and determination of the newly designated director; and the applicant and that director shall be notified thereof. If that determination is unsatisfactory, the provisions of subsection (b) of this Code section regarding procedures after notification shall apply. If that determination is satisfactory, the department shall perform a fingerprint records check and determination for that director as provided in Code Sections 31-7-254 and 31-7-255. If that determination is satisfactory, the personal care home and director for whom the determination was made shall be so notified, and the license for the facility at which that person is the newly designated director shall not be adversely affected by that change of director. If that determination is unsatisfactory, the provisions of subsection (b) of this Code section shall apply. (Code 1981, § 31-7-258, enacted by Ga. L. 1985, p. 952, § 2.)

31-7-259. Preliminary records check determination; suspension or revocation of license; refusal to issue regular license; fingerprint check; employment history; director's criminal liability; exempt employees; mitigating factors in criminal records check; civil penalty.

(a) Before a person may become a director of any facility that has received either a temporary or regular license, that facility shall require that person to furnish to the department a preliminary records check application and a records check application and the department shall, under the procedures of Code Sections 31-7-252 and 31-7-253, make a preliminary records check determination and send notice thereof to the facility and director prior to the director beginning work. If the preliminary records check is unsatisfactory, the facility shall not hire the director. If the subsequent fingerprint records check determination is unsatisfactory, the facility shall take such steps as are necessary so that such person is no longer the director of the facility.

(b) Before a person may become an employee of a facility, each potential employee of a facility shall request a criminal record check from a local law enforcement agency and submit the results of the criminal record check to the facility. The personal care home shall be authorized to rely on written information received from a local law enforcement agency, GCIC, or other official agency to determine whether the applicant for employment has a criminal record. A personal

care home shall not employ a person with an unsatisfactory determination.

(c) In addition, where an applicant for employment at a personal care home has not been a resident of the state for a period of three years preceding the date of application for employment, the personal care home shall attempt to obtain a criminal record check from the local law enforcement agency of the applicant's previous state of residence. If the local criminal record check from either the applicant's previous state of residence or this state indicates multistate offender status, the personal care home shall not employ the applicant until a determination is made as to whether the applicant has a criminal record. If the personal care home elects to determine the nature of the criminal activity, the personal care home shall transmit the preliminary records check application and the records check application on behalf of the potential employee to the department for processing through the GCIC. A personal care home shall not employ a person with an unsatisfactory determination.

(d) If the personal care home is unable to obtain a criminal record check from the local law enforcement agency of the applicant's previous state of residence, it shall transmit a records check application to the department which shall process the application through the GCIC. A personal care home shall not employ a person with an unsatisfactory determination.

(e) The fee for a criminal records check under this Code section shall be no greater than the actual cost of processing the request and shall be paid by the personal care home or by the applicant for employment. The law enforcement agency of this state receiving the request shall perform a criminal record check for a personal care home within a reasonable time but in any event within a period not to exceed three days of receiving the request.

(f) Each application form provided by the employer to the applicant for employment shall conspicuously state the following: "FOR THIS TYPE OF EMPLOYMENT, STATE LAW REQUIRES A CRIMINAL RECORD CHECK AS A CONDITION OF EMPLOYMENT."

(g) Both temporary and regular licenses are subject to suspension or revocation or the department may refuse to issue a regular license if a person becomes a director or employee subsequent to the granting of a license and that person does not undergo the records checks applicable to that director or employee and receive a satisfactory determination.

(h) After the issuance of a regular or temporary license, the department may require a fingerprint records check on any director or employee to confirm identification for records search purposes, or when subsequent to a preliminary records check, the department has reason

to believe that the director or employee has a criminal record. The department may require a fingerprints record check on any director or employee during the course of an abuse investigation involving the director or employee. In such instances, the department shall require the director or employee to furnish two full sets of fingerprints which the department shall submit to the GCIC together with appropriate fees collected from the director or employee or personal care home. Upon receipt thereof, the GCIC shall promptly transmit one set of fingerprints to the Federal Bureau of Investigation for a search of bureau records and an appropriate report and retain the other set and promptly conduct a search of its records and records to which it has access. The GCIC shall notify the department in writing of any derogatory finding, including but not limited to any criminal record obtained through the fingerprint record check or if there is no such finding. Where the department determines that the director or employee has a criminal record, the department shall notify the facility of the unsatisfactory determination and the facility shall take such steps as are necessary so that such person is no longer the director or an employee of the facility.

(i) No personal care home may have any person as an employee after July 1, 2002, unless there is on file in the personal care home an employment history for that person and a satisfactory determination that the person does not have a criminal record.

(j) Except as provided in subsection (l) of this Code section, a director of a facility having an employee whom that director knows or should reasonably know to have a criminal record, as defined in Code Section 31-7-250, shall be guilty of a misdemeanor.

(k) The provisions of this Code section shall not apply to a member of the administrative staff or an applicant for an administrative staff position of a personal care home whose duties do not include management of resident funds or personal contact between that person and any paying resident of the home.

(l) Where a personal care home determines that an applicant for employment has a criminal record but there are matters in mitigation of the criminal record, no physical harm was done to the victim, and the personal care home would like to hire the applicant, the personal care home may submit an application for a preliminary records check to the department on behalf of the potential employee on forms provided by the department. The personal care home shall not hire the potential employee to work in the home until the personal care home receives notification from the department that the applicant either has a satisfactory criminal record check or an administrative law judge has determined that the applicant is authorized to work in a personal care home.

(m) Except as provided in subsection (l) of this Code section, a personal care home that hires an applicant for employment with a criminal record is in violation of licensing requirements and the department is authorized to impose a civil penalty pursuant to the authority granted it under the rules and regulations for the enforcement of licensing requirements. (Code 1981, § 31-7-259, enacted by Ga. L. 1985, p. 952, § 2; Ga. L. 2002, p. 942, § 8.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2002, a comma was deleted following “processing the request” in the first sentence in subsection (e).

31-7-260. Cooperation of Georgia Crime Information Center and law enforcement agencies with department; liability for misuse or attempted misuse of information.

(a) GCIC and law enforcement agencies which have access to GCIC information shall cooperate with the department in performing preliminary and fingerprint records checks required under this chapter and shall provide such information so required for such records checks notwithstanding any other law to the contrary and may charge reasonable fees therefor.

(b) Any person who knowingly and under false pretenses requests, obtains, or attempts to obtain GCIC information otherwise authorized to be obtained pursuant to this chapter, or who knowingly communicates or attempts to communicate such information obtained pursuant to this article to any person or entity except in accordance with this article, or who knowingly uses or attempts to use such information obtained pursuant to this article for any purpose other than as authorized by this article shall be fined not more than \$5,000.00, imprisoned for not more than two years, or both. (Code 1981, § 31-7-260, enacted by Ga. L. 1985, p. 952, § 2.)

31-7-261. Liability for claims in connection with dissemination of information or determination based thereon.

(a) Neither GCIC, the department, any county board of health, any law enforcement agency, nor the employees of any such entities shall be responsible for the accuracy of information or have any liability for defamation, invasion of privacy, negligence, or any other claim in connection with any dissemination of information or determination based thereon pursuant to this article.

(b) A facility, its director, and its employees shall have no liability for defamation, invasion of privacy, or any other claim based upon good faith action thereby pursuant to the requirements of this article. (Code

1981, § 31-7-261, enacted by Ga. L. 1985, p. 952, § 2; Ga. L. 1986, p. 509, § 1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1986, “or” was substituted for “nor” following “accuracy of information” in subsection (a).

Pursuant to Code Section 28-9-5, in 1996, the hyphen was deleted from “good faith” in subsection (b).

31-7-262. Supplemental nature of requirements of this article.

The requirements of this article are supplemental to any requirements for a license imposed by Article 1 of this chapter. (Code 1981, § 31-7-262, enacted by Ga. L. 1985, p. 952, § 2.)

31-7-263. Contested cases for purposes of the “Georgia Administrative Procedure Act.”

A determination by the department regarding preliminary or fingerprint records checks under this article or any action by the department revoking, suspending, or refusing to grant or renew a license based upon such determination shall constitute a contested case for purposes of Chapter 13 of Title 50, the “Georgia Administrative Procedure Act,” except that any hearing required to be held pursuant thereto may be held reasonably expeditiously after such determination or action by the department. It is expressly provided that upon motion from any party, the hearing officer may, in his discretion, consider matters in mitigation of any conviction, provided the hearing officer examines the circumstances of the case and makes an independent finding that no physical harm was done to a victim and also examines the character and employment history since the conviction and determines that there is no propensity for cruel behavior or behavior involving moral turpitude on the part of the person making a motion for an exception to sanctions normally imposed. If the hearing officer deems a hearing to be appropriate, he will also notify at least 30 days prior to such hearing the office of the prosecuting attorney who initiated the prosecution of the case in question in order to allow the prosecutor to object to a possible determination that the conviction would not be a bar for the grant or continuation of a license or employment as contemplated within this title. If objections are made, the hearing officer will take such objections into consideration in considering the case. If the hearing officer determines that no hearing in mitigation is justified, or, if after the hearing, rules against the party seeking mitigation, then in either of those events the hearing officer’s determinations shall be conclusive and final and not subject to further review. (Code 1981, § 31-7-263, enacted by Ga. L. 1985, p. 952, § 2; Ga. L. 1991, p. 721, § 1.)

Law reviews. — For note on 1991 amendment of this Code section, see 8 Ga. St. U.L. Rev. 74 (1992).

31-7-264. Regulatory power of department.

The department is authorized to provide by regulation for the administration of this article. (Code 1981, § 31-7-264, enacted by Ga. L. 1985, p. 952, § 2.)

31-7-265. Facility licensing and employee records checks for personal care homes transferred to Department of Community Health.

(a) Effective July 1, 2009, all matters relating to facility licensing and employee records checks for personal care homes pursuant to this article shall be transferred from the Department of Human Resources (now known as the Department of Human Services) to the Department of Community Health.

(b) The Department of Community Health shall succeed to all rules, regulations, policies, procedures, and administrative orders of the Department of Human Resources that are in effect on June 30, 2009, or scheduled to go into effect on or after July 1, 2009, and which relate to the functions transferred to the Department of Community Health pursuant to this Code section and shall further succeed to any rights, privileges, entitlements, obligations, and duties of the Department of Human Resources that are in effect on June 30, 2009, which relate to the functions transferred to the Department of Community Health pursuant to this Code section. Such rules, regulations, policies, procedures, and administrative orders shall remain in effect until amended, repealed, superseded, or nullified by the Department of Community Health by proper authority or as otherwise provided by law.

(c) The rights, privileges, entitlements, and duties of parties to contracts, leases, agreements, and other transactions entered into before July 1, 2009, by the Department of Human Resources which relate to the functions transferred to the Department of Community Health pursuant to this Code section shall continue to exist; and none of these rights, privileges, entitlements, and duties are impaired or diminished by reason of the transfer of the functions to the Department of Community Health. In all such instances, the Department of Community Health shall be substituted for the Department of Human Resources, and the Department of Community Health shall succeed to the rights and duties under such contracts, leases, agreements, and other transactions.

(d) All persons employed by the Department of Human Resources in capacities which relate to the functions transferred to the Department

of Community Health pursuant to this Code section on June 30, 2009, shall, on July 1, 2009, become employees of the Department of Community Health in similar capacities, as determined by the commissioner of community health. Such employees shall be subject to the employment practices and policies of the Department of Community Health on and after July 1, 2009, but the compensation and benefits of such transferred employees shall not be reduced as a result of such transfer. Employees who are subject to the rules of the State Personnel Board and who are transferred to the department shall retain all existing rights under such rules. Retirement rights of such transferred employees existing under the Employees' Retirement System of Georgia or other public retirement systems on June 30, 2009, shall not be impaired or interrupted by the transfer of such employees and membership in any such retirement system shall continue in the same status possessed by the transferred employees on June 30, 2009. Accrued annual and sick leave possessed by said employees on June 30, 2009, shall be retained by said employees as employees of the Department of Community Health. (Code 1981, § 31-7-265, enacted by Ga. L. 2008, p. 12, § 2-20/SB 433; Ga. L. 2009, p. 453, § 1-31/HB 228; Ga. L. 2009, p. 745, § 2/SB 97; Ga. L. 2012, p. 446, § 2-39/HB 642.)

The 2012 amendment, effective July 1, 2012, in subsection (d), in the third sentence, deleted "and thereby under the State Personnel Administration" following "State Personnel Board" and substituted "under such rules" for "under the State Personnel Administration".

Editor's notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: "Personnel, equipment, and facilities that were assigned to the State Personnel Administra-

tion as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."

ARTICLE 12

HEALTH CARE DATA COLLECTION

31-7-280. Health care provider annual reports; form.

(a) As used in this article, the term:

(1) "Department" means the Department of Community Health.

(2) "Health care provider" means any hospital or ambulatory surgical or obstetrical facility having a license or permit issued by the department under Article 1 of this chapter.

(3) "Indigent person" means any person having as a maximum allowable income level an amount corresponding to 125 percent of the federal poverty guideline.

(4) "Third-party payor" means any entity which provides health care insurance or a health care service plan, including but not limited to providers of major medical or comprehensive accident or health insurance, whether or not through a self-insurance plan, Medicaid, hospital service nonprofit corporation plans, health care plans, or nonprofit medical service corporation plans, but does not mean a specified disease or supplemental hospital indemnity payor.

(b) There shall be required from each health care provider in this state an annual report of certain health care information to be submitted to the department. The report shall be due on the last day of January and shall cover the 12 month period preceding each such calendar year.

(c) The report required under subsection (b) of this Code section shall contain the following information:

- (1) Total gross revenues;
- (2) Bad debts;
- (3) Amounts of free care extended, excluding bad debts;
- (4) Amounts of contractual adjustments;
- (5) Amounts of care provided under a Hill-Burton commitment;
- (6) Amounts of charity care provided to indigent persons;

(7) Amounts of outside sources of funding from governmental entities, philanthropic groups, or any other sources, including the proportion of any such funding dedicated to the care of indigent persons;

(8) For cases involving indigent persons:

- (A) The number of persons treated;
- (B) The number of inpatients and outpatients;
- (C) Total patient days;
- (D) The total number of patients categorized by county of residence;
- (E) The indigent care costs incurred by the health care provider by county of residence;

(9) The public, profit, or nonprofit status of the health care provider and whether or not the provider is a teaching hospital;

(10) The number of board certified physicians, by specialty, on the staff of the health care provider;

(11) The number of nursing hours per day for each hospital and per patient visit for each ambulatory surgical or obstetrical facility;

(12) For ambulatory surgical or obstetrical facilities, the types of surgery performed and emergency back-up systems available for that surgery;

(13) For hospitals:

(A) The availability of emergency services, trauma centers, intensive care units, and neonatal intensive care units;

(B) Procedures hospitals specialize in and the number of such procedures performed annually; and

(C) Cesarean section rates by number and as a percentage of deliveries; and

(14) Data available on a recognized uniform billing statement or substantially similar form generally used by health care providers which reflect, but are not limited to, the following type of data obtained during a 12 month period during each reporting period: unique longitudinal nonidentifying patient code, the patient's birth date, sex, race, geopolitical subdivision code, ZIP Code, county of residence, type of bill, beginning and ending service dates, date of admission, discharge date, disposition of the patient, medical or health record number, principal and secondary diagnoses, principal and secondary procedures and procedure dates, external cause of injury codes, diagnostic related group number (DRG), DRG procedure coding used, revenue codes, total charges and summary of charges by revenue code, payor or plan identification, or both, place of service code such as the uniform hospital identification number and hospital name, attending physician and other ordering, referring, or performing physician identification number, and specialty code.

(d) The department shall provide a form for the report required by subsection (b) of this Code section and may provide in such form for further categorical divisions of the information listed in subsection (c) of this Code section.

(e) The department shall, within a period of one year following July 1, 1989, in cooperation with representatives of such consumer groups and associations and health care providers as it shall designate, study and determine such quality indicators and such additional or alternative information related to the intent and purpose of this article as the department shall determine are in the best interests of the residents of this state.

(f) In the event that the department does not receive from a health care provider an annual report containing the data and information

required by this article within 30 days following the date such report was due or receives a timely but incomplete report, the department shall notify the health care provider regarding the deficiencies, by certified mail or statutory overnight delivery, return receipt requested. In the event such deficiency continues for 15 days after said notification has been given, the health care provider shall be liable for a penalty in the amount of \$1,000.00 for such violation and an additional penalty of \$500.00 for each day during which such violation continues and be subject to appropriate sanctions otherwise authorized by law, including, but not limited to, suspension or revocation of that provider's permit or license. (Code 1981, § 31-7-280, enacted by Ga. L. 1988, p. 991, § 1; Ga. L. 1991, p. 94, § 31; Ga. L. 1995, p. 745, § 2.1; Ga. L. 1996, p. 1201, § 2.1; Ga. L. 2000, p. 1589, § 3; Ga. L. 2006, p. 72, § 31/SB 465; Ga. L. 2008, p. 12, § 2-21/SB 433.)

31-7-281. Data system established; departmental authority.

(a) The department shall be required to establish and operate a state-wide health care data system to collect, compile, analyze, and disseminate data collected pursuant to this article from health care providers and other specified entities.

(b) The department shall be authorized to execute contracts or establish written agreements for the purpose of avoiding duplication of data collected pursuant to this article.

(c) Where an existing data collection system meets the collection requirements of the department pursuant to this article, the department shall utilize such existing system when the significant elements of such data are collected, provided that such system meets the requirements of the department pursuant to this article and is available, without undue restrictions, to the department. For purposes of this subsection, reimbursement from the department for the costs incurred by such existing system in collecting this data shall not be considered an undue restriction.

(d) The department shall have complete authority over any data collection functions performed pursuant to this article and shall be authorized to perform such data analyses as shall, in its discretion, be required.

(e) The department shall establish a system to review and audit selected report data which contain the information listed in subsection (c) of Code Section 31-7-280 and which are collected other than by the department. (Code 1981, § 31-7-281, enacted by Ga. L. 1988, p. 991, § 1.)

31-7-282. Collection and submission of data.

The department shall be authorized to request, collect, or receive the collection and submission of data listed in subsection (c) of Code Section 31-7-280 from:

- (1) Health care providers;
- (2) The Department of Human Services;
- (3) The Commissioner of Insurance;
- (4) Reserved;
- (5) Third-party payors;
- (6) A nationally recognized health care accreditation body; and
- (7) Other appropriate sources as determined by the department.

Any entity specified in paragraphs (1) through (3) of this Code section which has in its custody or control data requested by the department pursuant to this Code section shall provide the department with such data, but any data regarding a health care provider which is already available in the records of any state officer, department, or agency specified in paragraph (2) or (3) of this Code section shall not be required to be provided to the department by that health care provider. (Code 1981, § 31-7-282, enacted by Ga. L. 1988, p. 991, § 1; Ga. L. 1996, p. 6, § 31; Ga. L. 1999, p. 296, §§ 22, 24; Ga. L. 2000, p. 136, § 31; Ga. L. 2006, p. 72, § 31/SB 465; Ga. L. 2008, p. 12, § 2-22/SB 433; Ga. L. 2009, p. 8, § 31/SB 46; Ga. L. 2009, p. 453, § 2-2/HB 228; Ga. L. 2012, p. 337, § 5/SB 361.)

The 2012 amendment, effective July 1, 2012, substituted “A nationally recognized health care accreditation body” for

“The Joint Commission on the Accreditation of Healthcare Organizations” in paragraph (6).

31-7-283. Compilation and dissemination of information; rules and regulations.

(a) The department shall compile, direct the compilation of, and disseminate comparative information provided in the annual reports under Code Section 31-7-280 on a health care provider specific basis.

(b) Any data collected by the department may be included in department reports pursuant to this article as deemed appropriate to offer full information to the public. Prior to any release or dissemination of the data, the department shall permit the reporting entity a 30 day opportunity to verify the accuracy of any information pertaining to its data. The reporting entity may submit to the department any corrections of errors in the compilations of the data with any supporting

evidence and comments. The department shall correct for the report such data which, in its judgment, are found to be in error. Any information, evidence, or comments submitted to the department in writing by the reporting entity shall be included as a part of the department's release or dissemination.

(c) If the data required by the department are available from the reporting entity by acceptably formatted, computer readable means, such method for reporting shall be preferred.

(d) The reporting of any data required by this article by specified types of health care providers shall include health care providers operated by state, county, municipality, public or private entities, or any combination thereof.

(e) The department shall be authorized to promulgate such rules and regulations as are necessary to effectuate and carry out its authority and duties under this article. (Code 1981, § 31-7-283, enacted by Ga. L. 1988, p. 991, § 1.)

31-7-284. Public disclosure; updating of data base; publication; fees.

(a) Subject to the procedures specified in subsection (b) of Code Section 31-7-283, the department shall be authorized to disclose nonpatient-specific data required under this article. Dissemination of such data to the public shall be made in clear and understandable language and in such form as to facilitate appropriate planning and choices on the part of consumers, providers, and payors.

(b) The department data base established pursuant to this article shall be updated no less frequently than on an annual basis. Public reports from that data shall be published no less frequently than annually.

(c) The costs to the state associated with the data collection system provided for in this article shall be paid through the department budget. The department shall, at its discretion and funds permitting, begin collection and dissemination of data immediately. The department is authorized to charge fees for reports, data, and information related to the data system; provided, however, no fees shall be imposed upon health care providers which submit data to the department pursuant to this article. The department shall implement a fee scale for such information that will result in fee collections not to exceed the costs of the data collection system. All such fees shall be remitted to the general fund of the state. (Code 1981, § 31-7-284, enacted by Ga. L. 1988, p. 991, § 1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2006, “payers” was substituted for “payers” in the second sentence of subsection (a).

31-7-285. Confidentiality; liability.

(a) Notwithstanding any provision of law to the contrary, it shall not be unlawful for any entity which may be requested or required to provide data to the department under this article so to provide that information or for the department or its designees to provide such information as authorized or required by this article or any other law.

(b) Information provided to the department pursuant to this article or information released by the department shall not identify a patient by name or specific address. Any person, firm, corporation, association, or other entity who violates this subsection shall be guilty of a misdemeanor.

(c) A person shall not be civilly liable as a result of the person’s acts, omissions, or decisions as an officer or employee or agent in connection with the person’s duties for the department under this article.

(d) Unless otherwise provided in this article, the data collected by and furnished to the department pursuant to this article shall not be public records under Article 4 of Chapter 18 of Title 50 or any other law governing the maintenance, inspection, or dissemination of data collected by the state. The reports prepared for release or dissemination from the data collected shall be public records under Article 4 of Chapter 18 of Title 50. The confidentiality of patients shall be protected and no provision of this article shall affect any provision of law relating to patient confidentiality.

(e) No cause of action shall arise against a person, entity, or health care provider for disclosing or reporting information in accordance with this article; provided, however, that this Code section shall not provide immunity for disclosing or furnishing false information with malice or willful intent to injure any person. (Code 1981, § 31-7-285, enacted by Ga. L. 1988, p. 991, § 1; Ga. L. 1991, p. 94, § 31.)

ARTICLE 13

PRIVATE HOME CARE PROVIDERS

Administrative rules and regulations. — Private home care providers, Official Compilation of the Rules and Regulations of the State of Georgia, Depart-

ment of Human Resources (now the Department of Community Health for these purposes), Public Health, Chapter 290-5-54.

RESEARCH REFERENCES

Am. Jur. 2d. — 40A Am. Jur. 2d, Hospitals and Asylums, § 2 et seq.

31-7-300. Definitions.

As used in this article, the term:

(1) “Companion or sitter tasks” means the following tasks which are provided to elderly, handicapped, or convalescing individuals: transport and escort services; meal preparation and serving; and household tasks essential to cleanliness and safety. These tasks do not include assistance with bathing, toileting, grooming, shaving, dental care, dressing, and eating.

(2) “Department” means the Department of Community Health.

(3) “Personal care tasks” means assistance with bathing, toileting, grooming, shaving, dental care, dressing, and eating; and may include but are not limited to proper nutrition, home management, housekeeping tasks, ambulation and transfer, and medically related activities, including the taking of vital signs only in conjunction with the above tasks.

(4) “Private home care provider” means any person, business entity, corporation, or association, whether operated for profit or not for profit, that directly provides or makes provision for private home care services through:

(A) Its own employees or agents;

(B) Contractual arrangements with independent contractors; or

(C) Referral of other persons to render home care services, when the individual making the referral has ownership or financial interest in the delivery of those services by those other persons who would deliver those services.

(5) “Private home care services” means those items and services provided at a patient’s residence that involve direct care to that patient and includes, without limitation, any or all of the following:

(A) Nursing services, provided that such services can only be provided by a person licensed under Chapter 26 of Title 43;

(B) Personal care tasks; and

(C) Companion or sitter tasks.

Private home care services shall not include physical, speech, or occupational therapy; medical nutrition therapy; medical social services; or home health aide services provided by a home health agency.

(6) "Residence" means the place where an individual makes that person's permanent or temporary home, whether that person's own apartment or house, a friend or relative's home, or a personal care home, but shall not include a hospital, nursing home, hospice, or other health care facility licensed under Article 1 of this chapter. (Code 1981, § 31-7-300, enacted by Ga. L. 1994, p. 959, § 1; Ga. L. 2008, p. 12, § 2-23/SB 433.)

31-7-301. License requirement; license not assignable or transferable.

Except as otherwise provided in this article, on and after July 1, 1996, no person, business entity, corporation, or association, whether operated for profit or not for profit, may operate as a private home care provider without first obtaining a license or provisional license from the department. A license issued under this article is not assignable or transferable. (Code 1981, § 31-7-301, enacted by Ga. L. 1994, p. 959, § 1; Ga. L. 1996, p. 6, § 31.)

31-7-302. Rules and regulations; authority of department to issue, suspend, or revoke licenses.

The department is authorized to promulgate rules and regulations to implement this article. The department is authorized to issue, deny, suspend, or revoke licenses or take other disciplinary actions against licensees as provided in Code Section 31-2-8. (Code 1981, § 31-7-302, enacted by Ga. L. 1994, p. 959, § 1; Ga. L. 2009, p. 453, § 1-9/HB 228; Ga. L. 2011, p. 705, § 4-7/HB 214.)

The 2011 amendment, effective July 1, 2011, substituted "Code Section 31-2-8" for "Code Section 31-2-11" at the end of this Code section.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

31-7-303. Inspections; requirements for exemption.

Each private home care provider for which a license has been issued shall be inspected by the department periodically; provided, however, the department may exempt a provider from inspections if it is certified or accredited by a certification or accreditation entity recognized and approved by the department. A provider seeking exemption from inspection shall be required to submit to the department documentation of certification or accreditation, including a copy of its most recent certification or accreditation report. (Code 1981, § 31-7-303, enacted by Ga. L. 1994, p. 959, § 1.)

31-7-304. Fees.

The department is authorized to charge an application fee, a license fee, a license renewal fee, or a similar fee; and the amount of such fees shall be established by the Board of Community Health. Each fee so established shall be reasonable and shall be determined in such a manner that the total of the fees charged shall approximate the total of the direct and the indirect costs to the state of the operation of the licensing program. Fees may be refunded for good cause as determined by the department. (Code 1981, § 31-7-304, enacted by Ga. L. 1994, p. 959, § 1; Ga. L. 2009, p. 8, § 31/SB 46; Ga. L. 2009, p. 453, § 1-5/HB 228.)

31-7-305. Exempt services.

This article shall not apply to private home care services which are provided under the following conditions:

(1) When those services are provided directly by an individual, either with or without compensation, and not by agents or employees of the individual and not through independent contractors or referral arrangements made by an individual who has ownership or financial interest in the delivery of those services by others who would deliver those services;

(2) When those services are home infusion therapy services and the intermittent skilled nursing care is provided only as an integral part of the delivery and infusion of pharmaceuticals, but such skilled nursing care, whether hourly or intermittent, which provides care licensed by this article beyond the basic delivery and infusion of pharmaceuticals is not exempt;

(3) When those services are provided through the temporary placement of professionals and paraprofessionals to perform those services in places other than a person's residence;

(4) When those services are provided by home health agencies which are licensed under Article 7 of this chapter;

(5) When those services are provided in a personal care home by the staff of the personal care home;

(6) When those services are services within the scope of practice of pharmacy and provided by persons licensed to practice pharmacy; and

(7) When those services are provided directly by an individual on a volunteer basis through a senior volunteer program, which includes the foster grandparent program, the senior companion program, and

the retired and senior volunteer program. In no case shall there be remuneration to any person, firm, corporation, or volunteer for services rendered or coordination of services in conjunction with the senior volunteer program or the foster grandparent program. (Code 1981, § 31-7-305, enacted by Ga. L. 1994, p. 959, § 1; Ga. L. 1997, p. 586, § 1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1994, “article” was substituted for “Act” in paragraph (2).

31-7-306. Applications received prior to effective date of article.

A person, business entity, corporation, or association which has applied for a license pursuant to this article prior to July 1, 1996, but which has not been granted such license within 180 days after rules implementing this article have become effective shall be authorized to continue to operate without such license until 90 days after the application for license has been denied. (Code 1981, § 31-7-306, enacted by Ga. L. 1994, p. 959, § 1; Ga. L. 1996, p. 6, § 31.)

31-7-307. Certificate of need not required of licensees; operation of licensee as home health agency not authorized.

(a) A certificate of need issued pursuant to Chapter 6 of this title is not required for any person, business entity, corporation, or association, whether operated for profit or not for profit, which is operating as a private home care provider as long as such operation does not also constitute such person, entity, or organization operating as a home health agency or personal care home under this chapter.

(b) A license issued under this article shall not entitle the licensee to operate as a home health agency, as defined in Code Section 31-7-150, under medicare or Medicaid guidelines. (Code 1981, § 31-7-307, enacted by Ga. L. 1994, p. 959, § 1.)

31-7-308. Licensure and regulation of private home care providers transferred to Department of Community Health.

(a) Effective July 1, 2009, all matters relating to the licensure and regulation of private home care providers pursuant to this article shall be transferred from the Department of Human Resources (now known as the Department of Human Services) to the Department of Community Health.

(b) The Department of Community Health shall succeed to all rules, regulations, policies, procedures, and administrative orders of the Department of Human Resources that are in effect on June 30, 2009, or

scheduled to go into effect on or after July 1, 2009, and which relate to the functions transferred to the Department of Community Health pursuant to this Code section and shall further succeed to any rights, privileges, entitlements, obligations, and duties of the Department of Human Resources that are in effect on June 30, 2009, which relate to the functions transferred to the Department of Community Health pursuant to this Code section. Such rules, regulations, policies, procedures, and administrative orders shall remain in effect until amended, repealed, superseded, or nullified by the Department of Community Health by proper authority or as otherwise provided by law.

(c) The rights, privileges, entitlements, and duties of parties to contracts, leases, agreements, and other transactions entered into before July 1, 2009, by the Department of Human Resources which relate to the functions transferred to the Department of Community Health pursuant to this Code section shall continue to exist; and none of these rights, privileges, entitlements, and duties are impaired or diminished by reason of the transfer of the functions to the Department of Community Health. In all such instances, the Department of Community Health shall be substituted for the Department of Human Resources, and the Department of Community Health shall succeed to the rights and duties under such contracts, leases, agreements, and other transactions.

(d) All persons employed by the Department of Human Resources in capacities which relate to the functions transferred to the Department of Community Health pursuant to this Code section on June 30, 2009, shall, on July 1, 2009, become employees of the Department of Community Health in similar capacities, as determined by the commissioner of community health. Such employees shall be subject to the employment practices and policies of the Department of Community Health on and after July 1, 2009, but the compensation and benefits of such transferred employees shall not be reduced as a result of such transfer. Employees who are subject to the rules of the State Personnel Board and who are transferred to the department shall retain all existing rights under such rules. Retirement rights of such transferred employees existing under the Employees' Retirement System of Georgia or other public retirement systems on June 30, 2009, shall not be impaired or interrupted by the transfer of such employees and membership in any such retirement system shall continue in the same status possessed by the transferred employees on June 30, 2009. Accrued annual and sick leave possessed by said employees on June 30, 2009, shall be retained by said employees as employees of the Department of Community Health. (Code 1981, § 31-7-308, enacted by Ga. L. 2008, p. 12, § 2-24/SB 433; Ga. L. 2009, p. 453, § 1-32/HB 228; Ga. L. 2009, p. 745, § 2/SB 97; Ga. L. 2012, p. 446, § 2-40/HB 642.)

The 2012 amendment, effective July 1, 2012, in subsection (d), in the third sentence, deleted “and thereby under the State Personnel Administration” following “State Personnel Board”, and substituted “under such rules” for “under the State Personnel Administration”.

Editor’s notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: “Personnel, equipment, and facilities that were assigned to the State Personnel Administra-

tion as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act.” This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: “Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90.”

ARTICLE 14

NURSING HOMES EMPLOYEE RECORDS CHECKS

Administrative rules and regulations. — Schedule of fees for fingerprint records check, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Human Resources (now the Department of Commu-

nity Health for these purposes), Administration, Chapter 290-1-5.

Law reviews. — For note on the 1995 enactment of this article, see 12 Ga. St. U.L. Rev. 252 (1995).

RESEARCH REFERENCES

Am. Jur. 2d. — 40A Am. Jur. 2d, Hospitals and Asylums, § 15.

31-7-350. Definitions.

As used in this article, the term:

(1) “Conviction” means a finding or verdict of guilty or a plea of guilty regardless of whether an appeal of the conviction has been sought.

(2) “Crime” means commission of an offense which constitutes a felony with respect to the following:

(A) A violation of Code Section 16-5-21, relating to aggravated assault;

(B) A violation of Code Section 16-5-24, relating to aggravated battery;

(C) A violation of Code Section 16-6-1, relating to rape;

(D) A violation of Code Section 16-8-2, relating to theft by taking;

(E) A violation of Code Section 16-8-3, relating to theft by deception;

(F) A violation of Code Section 16-8-4, relating to theft by conversion;

(G) A violation of Code Section 16-5-1, relating to murder and felony murder;

(H) A violation of Code Section 16-4-1, relating to criminal attempt as it concerns attempted murder;

(I) A violation of Code Section 16-8-40, relating to robbery;

(J) A violation of Code Section 16-8-41, relating to armed robbery;

(K) A felony violation of Code Section 16-9-1;

(L) A violation of Chapter 13 of Title 16, relating to controlled substances; or

(M) Any other offense committed in another jurisdiction which, if committed in this state, would be deemed to be such a crime without regard to its designation elsewhere.

(3) "Criminal record" means any of the following which have reached final disposition within ten years of the date the criminal record check is conducted:

(A) Conviction of a crime;

(B) Arrest, charge, and sentencing for a crime where:

(i) A plea of nolo contendere was entered to the charge;

(ii) First offender treatment without adjudication of guilt pursuant to the charge was granted; or

(iii) Adjudication or sentence was otherwise withheld or not entered on the charge; or

(C) Arrest and charges for a crime if the charge is pending, unless the time for prosecuting such crime has expired pursuant to Chapter 3 of Title 17.

(4) "Employment applicant" means any person seeking employment by a nursing home. This term shall not include persons employed by the nursing home prior to July 1, 1995.

(5) "GCIC" means the Georgia Crime Information Center established under Article 2 of Chapter 3 of Title 35.

(6) "Nursing home" or "home" means a home required to be licensed or permitted as a nursing home under the provisions of this chapter.

(7) "Satisfactory determination" means a written determination by a nursing home that a person for whom a record check was performed was found to have no criminal record.

(8) "Unsatisfactory determination" means a written determination by a nursing home that a person for whom a record check was performed was found to have a criminal record. (Code 1981, § 31-7-350, enacted by Ga. L. 1995, p. 570, § 1; Ga. L. 2001, p. 806, § 1; Ga. L. 2012, p. 899, § 8-13/HB 1176.)

The 2012 amendment, effective July 1, 2012, substituted the present provisions of subparagraph (2)(K) for the former provisions, which read: "A violation of Code Section 16-9-1, relating to forgery in the first degree; a violation of Code Section 16-9-2, relating to forgery in the second degree;"

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1995, "July 1, 1995" was substituted for "the effective date of this article" in paragraph (4) and "this chapter" was substituted for "Chapter 7 of Title 31" in paragraph (6).

Editor's notes. — Ga. L. 2012, p. 899, § 9-1(a)/HB 1176, not codified by the Gen-

eral Assembly, provides: "This Act shall become effective on July 1, 2012, and shall apply to offenses which occur on or after that date. Any offense occurring before July 1, 2012, shall be governed by the statute in effect at the time of such offense and shall be considered a prior conviction for the purpose of imposing a sentence that provides for a different penalty for a subsequent conviction for the same type of offense, of whatever degree or level, pursuant to this Act."

Law reviews. — For note on the 2001 amendment to this Code section, see 18 Ga. St. U.L. Rev. 153 (2001).

31-7-351. Request for criminal record check; employment application form notice.

(a) Prior to hiring an employment applicant, each nursing home shall request a criminal record check from GCIC to determine whether the applicant has a criminal record. A nursing home shall make a written determination for each applicant for whom a criminal record check is performed. A nursing home shall not employ a person with an unsatisfactory determination.

(b) Any request for a criminal record check under this Code section shall be on a form approved by GCIC and submitted in person, by mail, or by facsimile request to any county sheriff or municipal law enforcement agency having access to GCIC information. The fee shall be no greater than the actual cost of processing the request. The law enforcement agency receiving the request shall perform a criminal record check for a nursing home within a reasonable time but in any event within a period not to exceed three days of receiving the request.

(c) Each application form provided by the employer to the employment applicant shall conspicuously state the following: "FOR THIS TYPE OF EMPLOYMENT, STATE LAW REQUIRES A CRIMINAL RECORD CHECK AS A CONDITION OF EMPLOYMENT." (Code

1981, § 31-7-351, enacted by Ga. L. 1995, p. 570, § 1; Ga. L. 2001, p. 806, § 2.)

Law reviews. — For note on the 2001 amendment to this Code section, see 18 Ga. St. U.L. Rev. 153 (2001).

31-7-352. Immunity from liability.

(a) Neither GCIC nor any law enforcement agency providing GCIC information pursuant to this article shall be responsible for the accuracy of information or have any liability for defamation, invasion of privacy, negligence, or any other claim in connection with any dissemination of information or determination based thereon pursuant to this article.

(b) A nursing home, its administrator, and its employees shall have no liability for wrongful discharge, unemployment security benefits, or any other claim based upon:

(1) Refusal to employ any person with a criminal record;

(2) Termination of employment of persons with a criminal record already employed by the home; or

(3) Other action taken in good faith reliance upon GCIC information received pursuant to this article. (Code 1981, § 31-7-352, enacted by Ga. L. 1995, p. 570, § 1.)

31-7-353. Penalty for hiring applicant with criminal record.

A nursing home that hires an applicant for employment with a criminal record shall be liable for a civil monetary penalty in the amount of the lesser of \$2,500.00 or \$500.00 for each day that a violation of subsection (a) of Code Section 31-7-351 occurs. The daily civil monetary penalty shall be imposed only from the time the nursing home administrator knew or should have known that the nursing home has in its employ an individual with a criminal record and until the date such individual is terminated. (Code 1981, § 31-7-353, enacted by Ga. L. 2001, p. 806, § 3.)

Cross references. — Equal protection, U.S. Const., amend. 14 and Ga. Const. 1983, Art. I, Sec. I, Para. II.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2001,

“\$2,500.00” was substituted for “\$2500.00” in the first sentence.

Law reviews. — For note on the 2001 enactment of this Code section, see 18 Ga. St. U.L. Rev. 153 (2001).

31-7-354. Authority to enforce article; rules and regulations.

The Department of Community Health shall be authorized to enforce this article and to promulgate rules and regulations related to the requirements of this article. (Code 1981, § 31-7-354, enacted by Ga. L. 2008, p. 12, § 2-25/SB 433.)

ARTICLE 15**HOSPITAL ACQUISITION****31-7-400. Definitions.**

As used in this article the term:

(1) "Acquiring entity" means an individual, business corporation, general partnership, limited partnership, limited liability company, limited liability partnership, joint venture, nonprofit corporation, hospital authority, or any other for profit or not for profit entity which is a purchaser or lessee of an acquisition.

(2) "Acquisition" means a purchase or lease by an acquiring entity of the assets of a hospital which is owned, controlled, or operated by a nonprofit corporation and which meets one or more of the following conditions:

(A) Constitutes a purchase or lease of 50 percent or more of the assets of a hospital having a permit under this chapter; or

(B) Constitutes a purchase or lease which, when combined with one or more transfers between the same or related parties occurring within a five-year period, constitutes a purchase or lease of 50 percent or more of the assets of a hospital having a permit under this chapter;

provided, however, that an acquisition does not include the restructuring of a hospital owned by a hospital authority involving a lease of assets to any not for profit or for profit entity which has a principal place of business located in the same county where the main campus of the hospital in question is located and which is not owned, in whole or in part, or controlled by any other for profit or not for profit entity whose principal place of business is located outside such county; provided, further, that an acquisition does not include a restructuring of a nonprofit health system involving the purchase or lease of the assets of a hospital controlled as of March 1, 1999, by the health system's nonprofit parent corporation by another nonprofit entity which is both exempt from federal income taxation and controlled by the same nonprofit parent corporation.

(3) "Attorney General" means the Attorney General of the State of Georgia or some other attorney employed in the Attorney General's office and designated to perform the functions required by this article.

(4) "Control" or "controlling interest" means ownership of 50 percent or more of the assets of the entity in question or the ability to influence significantly the operations or decisions of the entity in question.

(5) "Disposition" means a sale or lease of the assets of a hospital which is owned, controlled, or operated by a nonprofit corporation to an acquiring entity which meets one or more of the following conditions:

(A) Constitutes a sale or lease of 50 percent or more of the assets of a hospital having a permit under this chapter; or

(B) Constitutes a sale or lease which, when combined with one or more transfers between the same or related parties occurring within a five-year period, constitutes a sale or lease of 50 percent or more of the assets of a hospital having a permit under this chapter;

provided, however, that a disposition does not include the restructuring of a hospital owned by a hospital authority involving a lease of assets to any not for profit or for profit entity which has a principal place of business located in the same county where the main campus of the hospital in question is located and which is not owned, in whole or in part, or controlled by any other for profit or not for profit entity whose principal place of business is located outside such county; provided, further, that a disposition does not include a restructuring of a nonprofit health system involving the sale or lease of the assets of a hospital controlled as of March 1, 1999, by the health system's nonprofit parent corporation to another nonprofit entity which is both exempt from federal income taxation and controlled by the same nonprofit parent corporation.

(6) "Family" means a spouse, child, or sibling.

(7) "Financial interest" means the direct or indirect ownership of any assets or stock of any business.

(8) "Hospital" means any institution classified and having a permit as a hospital from the Department of Community Health pursuant to this chapter and such department's rules and regulations.

(9) "Related party" means an individual, business corporation, general partnership, limited partnership, limited liability company, limited liability partnership, joint venture, nonprofit corporation, or any other for profit or not for profit entity that owns or controls, is owned or controlled by, or operates under common ownership or control with a party in question.

(10) "Transaction" means an acquisition and disposition. (Code 1981, § 31-7-400, enacted by Ga. L. 1997, p. 1091, § 1; Ga. L. 1999, p. 850, § 1; Ga. L. 2008, p. 12, § 2-26/SB 433.)

Law reviews. — For annual survey article on local government law, see 52 Mercer L. Rev. 341 (2000). For article,

"Local Government Law," see 53 Mercer L. Rev. 389 (2001).

JUDICIAL DECISIONS

"Acquiring entity." — County is included under the broad catch-all provision: "any other for profit or not for profit entity which is a purchaser or lessee of an acquisition." Turpen v. Rabun County Bd. of Comm'rs, 245 Ga. App. 190, 537 S.E.2d 435 (2000).

"Hospital." — Paragraph (8) of O.C.G.A. § 31-7-400 cannot be construed to mean that a nonprofit corporation with a hospital permit as of the date of an

agreement to sell or as of the date of the original notice provided under the Hospital Acquisition Act, § 31-7-400 et seq., may simply turn in its permit to avoid application of the Act. For the remainder of the life of the proposed transaction or the public review process provided by the Act, a hospital is a hospital for the purposes of the Act. Turpen v. Rabun County Bd. of Comm'rs, 245 Ga. App. 190, 537 S.E.2d 435 (2000).

31-7-401. Notice to Attorney General of acquisition.

No acquiring entity shall engage in an acquisition without first notifying the Attorney General pursuant to this article. No nonprofit corporation which owns, controls, or operates, directly or indirectly, a hospital having a permit under this chapter shall engage in a disposition without first notifying the Attorney General pursuant to this article. The parties to the transaction shall provide the Attorney General with at least 90 days' notice of the proposed transaction prior to its consummation. (Code 1981, § 31-7-401, enacted by Ga. L. 1997, p. 1091, § 1.)

JUDICIAL DECISIONS

Notice and hearing requirements mandatory. — Lease and transfer agreement of a hospital was invalid since the agreement was consummated before notice was given to the Attorney General and the holding of a public hearing. Sparks v. Hospital Auth., 241 Ga. App. 485, 526 S.E.2d 593 (1999).

Date of notice. — Critical date from which the 90 days for giving notice must be calculated is the date any part of the sale or lease effectively transfers ownership, operation, or control of the hospital

to the acquiring entity. Turpen v. Rabun County Bd. of Comm'rs, 245 Ga. App. 190, 537 S.E.2d 435 (2000).

Authority of Attorney General. — After a meaningful public hearing has been properly held on a proposed agreement, the Attorney General is authorized to determine whether a transaction is in the public interest and, thus, whether to approve or reject the agreement. Sparks v. Hospital Auth., 241 Ga. App. 485, 526 S.E.2d 593 (1999).

31-7-402. Content and form of notice to Attorney General; retention of experts; payment of costs and expenses.

(a) Notice to the Attorney General required by this article shall include the name of the seller or lessor; the name of the acquiring entity and other parties to the acquisition; the county in which the main campus of the hospital is located; the terms of the proposed agreement and any related agreements including leases, management contracts, and service contracts; the acquisition price; a copy of the acquisition agreement and any related agreements including leases, management contracts, and service contracts; any valuations of the hospital's assets prepared in the three years immediately preceding the proposed transaction date; a financial and economic analysis and report from any expert or consultant retained by the seller or lessor which addresses each of the criteria set forth in Code Section 31-7-406; articles of incorporation and bylaws of the nonprofit corporation and related entities and foundations; all donative documents reflecting the purposes of prior gifts of more than \$100,000.00 in value by donors to the nonprofit corporation or any related entities or foundations for or on behalf of the hospital; and all documents pertaining to the disposition of assets, including those documents which are included as schedules or exhibits to the acquisition agreement and any related agreements.

(b) The Attorney General may prescribe a form of notice to be utilized by the seller or lessor and the acquiring entity and may require information in addition to that specified in this article if the disclosure of such information is determined by the Attorney General to be in the public interest. The notice to the Attorney General required by this article and all documents related thereto shall be considered public records pursuant to Article 4 of Chapter 18 of Title 50.

(c) The Attorney General shall be authorized to retain financial, economic, health planning, or other experts or consultants to assist in addressing each of the criteria set forth in Code Section 31-7-406. Within 30 days after notice from the Attorney General, the actual and reasonable cost and expense incurred in connection with the retention of such experts or consultants shall be paid directly to such experts and consultants by the parties to the proposed transaction in such proportionate amounts as the parties may agree or otherwise as determined by the Attorney General. (Code 1981, § 31-7-402, enacted by Ga. L. 1997, p. 1091, § 1; Ga. L. 2009, p. 711, § 1/HB 667; Ga. L. 2012, p. 218, § 6/HB 397.)

The 2012 amendment, effective April 17, 2012, substituted "Article 4 of Chapter 18 of Title 50" for "Code Section 50-18-70" in the second sentence of subsection (b).

JUDICIAL DECISIONS

Cited in *Turpen v. Rabun County Bd. of Comm'rs*, 245 Ga. App. 190, 537 S.E.2d 435 (2000).

31-7-403. Certification of interest in acquiring entity; certification of financial interest in business associated with party to disposition; statement of fair dealing; opposing board members exempt.

(a) Except as provided in subsection (c) of this Code section, notice to the Attorney General required by this article shall also include a separate certification from each member of the governing board and the chief executive officer of the nonprofit corporation which is a party to the proposed disposition, and from each member of the governing board and the chief executive officer of any nonprofit corporation that holds a membership, stock, or controlling interest therein, executed under oath, stating whether that director or officer of the nonprofit corporation is then or may become within the three-year period following the completion of the transaction a member or shareholder in, or officer, employee, agent, or consultant of, or will otherwise derive any compensation or benefits, directly or indirectly, from the acquiring entity or any related party in connection with or as a result of the disposition.

(b) Except as provided in subsection (c) of this Code section, notice to the Attorney General required by this article shall also include a certification from each member of the governing board and the chief executive officer of the nonprofit corporation which is a party to the proposed disposition, and from each member of the governing board and the chief executive officer of any nonprofit corporation that holds a membership, stock, or controlling interest therein, executed under oath:

(1) Disclosing any financial interest held by that individual or that individual's family, or held by any business in which such individual or the individual's family owns a financial interest, in any business which:

(A) Within the immediately preceding 12 month period sold products, property interests, or services to the nonprofit corporation engaged in the disposition; or

(B) Within the immediately preceding 12 month period sold or within the three-year period after the completion of the transaction may sell products, property interests, or services to the acquiring entity;

(2) Disclosing any contract pursuant to which a sale was made or may be made of those products, property interests, or services

regarding financial interests which are disclosed pursuant to paragraph (1) of this subsection;

(3) Stating that the nonprofit corporation has received fair market value for its assets or, in the case of a proposed disposition to a not for profit entity or a hospital authority, stating that the nonprofit corporation has received an enforceable commitment of fair and reasonable community benefits for its assets;

(4) Stating that the market value of the hospital's assets has not been manipulated to decrease their value;

(5) Stating that the terms of the transaction are fair and reasonable to the nonprofit corporation;

(6) Stating that the transaction is authorized by the nonprofit corporation's governing documents and is consistent with the intent of any major donors who have contributed over \$100,000.00;

(7) Stating that the proceeds of the transaction will be used solely in a manner consistent with the charitable purposes of the nonprofit corporation and will not be used, directly or indirectly, to benefit the acquiring entity; and

(8) Stating that the transaction will not adversely affect the availability or accessibility of health care services in the county in which the main campus of the hospital is located.

(c) The certification requirements of subsections (a) and (b) of this Code section shall not apply to any governing board members who vote to oppose the proposed disposition. (Code 1981, § 31-7-403, enacted by Ga. L. 1997, p. 1091, § 1; Ga. L. 1998, p. 128, § 31.)

JUDICIAL DECISIONS

Cited in *Turpen v. Rabun County Bd. of Comm'rs*, 245 Ga. App. 190, 537 S.E.2d 435 (2000).

31-7-404. Publication of notice.

Within ten working days after receipt of notice under this article, the Attorney General shall publish notice of the proposed transaction in a newspaper of general circulation in the county where the main campus of the hospital is located and shall notify in writing the governing authority of such county. The published notice required by this Code section shall state that the Attorney General has received notice of a proposed transaction, the names of the parties to the proposed transaction, the date, time, and place of the public hearing regarding the transaction, and the means by which a person may submit written

comments about the proposed transaction to the Attorney General. (Code 1981, § 31-7-404, enacted by Ga. L. 1997, p. 1091, § 1.)

JUDICIAL DECISIONS

Cited in *Turpen v. Rabun County Bd. of Comm'rs*, 245 Ga. App. 190, 537 S.E.2d 435 (2000).

31-7-405. Public hearing; expert or consultant required to testify; testimony; representative of acquiring entity to testify.

(a) Within 60 days after receipt of the notice under this article, the Attorney General shall conduct a public hearing regarding the proposed transaction in the county in which the main campus of the hospital is located. At such hearing, the Attorney General shall provide an opportunity for those persons in favor of the transaction, those persons opposed to the transaction, and other interested persons to be heard. The Attorney General shall also receive written comments regarding the transaction from any interested person, and such written comments shall be considered public records pursuant to Article 4 of Chapter 18 of Title 50.

(b) Any expert or consultant retained by the nonprofit corporation to prepare the financial and economic analysis of the proposed transaction shall be required to appear and testify at the public hearing regarding his or her report if requested to do so by the Attorney General and may be questioned by the Attorney General. Such expert or consultant shall make the same disclosure required by members and officers under paragraphs (1) and (2) of subsection (b) of Code Section 31-7-403. The independent expert or consultant retained by the Attorney General to review the proposed transaction shall also appear and testify at the public hearing regarding his or her findings and analysis.

(c) At least one member of the governing board of the seller or lessor shall be designated by the seller or lessor, and at least one representative of the acquiring entity shall be designated by the acquiring entity, which designees shall appear and testify under oath at the public hearing and shall be subject to questioning by the Attorney General. (Code 1981, § 31-7-405, enacted by Ga. L. 1997, p. 1091, § 1; Ga. L. 2012, p. 218, § 7/HB 397.)

The 2012 amendment, effective April 17, 2012, substituted "Article 4 of Chapter 18 of Title 50" for "Code Section 50-18-70" in the last sentence of subsection (a).

JUDICIAL DECISIONS

Notice and hearing requirements mandatory. — Lease and transfer agreement of a hospital was invalid since the agreement was consummated before no-

tice was given to the Attorney General and the holding of a public hearing. *Sparks v. Hospital Auth.*, 241 Ga. App. 485, 526 S.E.2d 593 (1999).

31-7-406. Purpose of public hearing; factors to be addressed in disclosure.

The purpose of the public hearing shall be to ensure that the public's interest is protected when the assets of a nonprofit hospital are acquired by an acquiring entity by requiring full disclosure of the purpose and terms of the transaction and providing an opportunity for local public input. The disposition of a nonprofit hospital to an acquiring entity shall not be in the public interest unless there has been adequate disclosure that appropriate steps have been taken to ensure that the transaction is authorized, to safeguard the value of charitable assets, and to ensure that any proceeds of the transaction are used for appropriate charitable health care purposes. Such disclosure shall address, at a minimum, the following factors:

(1) Whether the disposition is permitted under Chapter 3 of Title 14, the "Georgia Nonprofit Corporation Code," and other laws of Georgia governing nonprofit entities, trusts, or charities;

(2) Whether the disposition is consistent with the directives of major donors who have contributed over \$100,000.00;

(3) Whether the governing body of the nonprofit corporation exercised due diligence in deciding to dispose of hospital assets, selecting the acquiring entity, and negotiating the terms and conditions of the disposition;

(4) The procedures used by the nonprofit corporation in making its decision to dispose of its assets, including whether appropriate expert assistance was used;

(5) Whether any conflict of interest was disclosed, including, but not limited to, conflicts of interest related to directors or officers of the nonprofit corporation and experts retained by the parties to the transaction;

(6) Whether the seller or lessor will receive fair value for its assets, including an appropriate control premium for any relinquishment of control or, in the case of a proposed disposition to a not for profit entity, will receive an enforceable commitment for fair and reasonable community benefits for its assets;

(7) Whether charitable assets are placed at unreasonable risk if the transaction is financed in part by the seller or lessor;

(8) Whether the terms of any management or services contract negotiated in conjunction with the transaction are reasonable;

(9) Whether any disposition proceeds will be used for appropriate charitable health care purposes consistent with the nonprofit corporation's original purpose or for the support and promotion of health care in the affected community;

(10) Whether a meaningful right of first refusal to repurchase the assets by a successor nonprofit corporation or foundation has been retained if the acquiring entity subsequently proposes to sell, lease, or transfer the hospital to yet another entity;

(11) Whether sufficient safeguards are included to assure the affected community continued access to affordable care and to the range of services historically provided by the nonprofit corporation;

(12) Whether the acquiring entity has made an enforceable commitment to provide health care to the disadvantaged, the uninsured, and the underinsured and to provide benefits to the affected community to promote improved health care; and

(13) Whether health care providers will be offered the opportunity to invest or own an interest in the acquiring entity or a related party, and whether procedures or safeguards are in place to avoid conflict of interest in patient referrals. (Code 1981, § 31-7-406, enacted by Ga. L. 1997, p. 1091, § 1.)

JUDICIAL DECISIONS

Cited in *Turpen v. Rabun County Bd. of Comm'rs*, 245 Ga. App. 190, 537 S.E.2d 435 (2000).

31-7-407. Attorney General to ensure compliance with article; other persons not precluded from instituting judicial proceedings.

The Attorney General shall have the authority to ensure compliance with any and all notices, certifications, obligations, and commitments which are required to be made in connection with a transaction under this article and may institute proceedings to enforce such compliance in the superior court of the county in which the main campus of the hospital is located. This provision shall not preclude any other person with standing from instituting judicial proceedings regarding the proposed disposition. (Code 1981, § 31-7-407, enacted by Ga. L. 1997, p. 1091, § 1.)

31-7-407.1. Report of findings.

The Attorney General shall issue a report of findings addressing the issues outlined in Code Section 31-7-406 within 30 days of the public hearing; provided, however, the time for issuing said report may be extended for an additional 30 days if the Attorney General finds there has been a failure by the entities involved in the transaction under review or any of them, to comply with disclosures required by this article or to respond to subpoenas or other process authorized by this article, and additional extensions may be ordered upon a continuation of a failure to so comply. (Code 1981, § 31-7-407.1, enacted by Ga. L. 1997, p. 1091, § 1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1997, this Code section, enacted as 31-4-407.1, was redesignated as Code Section 31-7-407.1.

31-7-408. Notice required prior to issuance or renewal of permit to operate hospital; permit subject to revocation or suspension for failure to comply.

No permit to operate a hospital may be issued or renewed under this chapter or any other applicable statute or regulation and a permit which has been issued shall be subject to revocation or suspension if there is a disposition or acquisition of hospital assets as defined in this article without notice first having been provided to the Attorney General as required by this article. (Code 1981, § 31-7-408, enacted by Ga. L. 1997, p. 1091, § 1.)

JUDICIAL DECISIONS

Cited in *Turpen v. Rabun County Bd. of Comm'rs*, 245 Ga. App. 190, 537 S.E.2d 435 (2000).

31-7-409. Prospective operation of article.

(a) Any transaction completed before October 31, 1997, or any transaction that is subject to a pending definitive agreement as of October 31, 1997, and which is either conditioned only upon receipt of regulatory approval, or is subject to a pending judicial proceeding as of April 1, 1997, is not subject to the requirements of this article.

(b) Any lease which is exempted from the operation of this article pursuant to subsection (a) of this Code section and which contained, on October 31, 1997, an option to renew that lease upon its expiration shall not be subject to this article upon any renewal on or after April 28, 1999. (Code 1981, § 31-7-409, enacted by Ga. L. 1997, p. 1091, § 1; Ga. L. 1999, p. 850, § 2.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1997, “October 31, 1997,” was substituted for “the effective date of this article” in two places.

Pursuant to Code Section 28-9-5, in 1999, “April 28,” was substituted for “the date this subsection becomes effective in” in subsection (b).

31-7-410. Authority of Attorney General unaffected.

No provision of this article shall derogate from the common law or statutory authority of the Attorney General. (Code 1981, § 31-7-410, enacted by Ga. L. 1997, p. 1091, § 1.)

31-7-411. Attorney General’s power under article same as under Code Section 45-15-17.

In connection with the Attorney General’s responsibilities under this article and in connection with the public hearing required by this article, the Attorney General shall have the same power to investigate and issue subpoenas as the Attorney General has with respect to investigations authorized under Code Section 45-15-17. (Code 1981, § 31-7-411, enacted by Ga. L. 1997, p. 1091, § 1.)

31-7-412. Disposition or acquisition made in violation of requirements of article null and void; violators subject to fine; Attorney General to instigate proceedings to impose fine within one year.

(a) Any disposition or acquisition of assets made in violation of the notice, disclosure, and certification requirements of this article shall be null and void, and each nonprofit entity and acquiring entity engaging in such disposition or acquisition shall be subject to a fine of up to \$50,000.00, the amount of which shall be determined by the superior court in the county in which the main campus of the hospital is located. The Attorney General shall institute proceedings to impose such fine within one year of the unlawful disposition or acquisition.

(b) Any person knowingly and willfully making a false statement in a certification under Code Section 31-7-403 or subsection (b) of Code Section 31-7-405, in addition to any criminal penalty which may be imposed pursuant to Code Section 16-10-71, shall be subject to a civil fine of up to \$50,000.00, the amount of which shall be determined by the superior court in the county in which the main campus of the hospital is located. The Attorney General shall institute proceedings to impose such fine within one year of the date of the certification. (Code 1981, § 31-7-412, enacted by Ga. L. 1997, p. 1091, § 1; Ga. L. 1999, p. 850, § 3.)

JUDICIAL DECISIONS

Transaction held null and void. — Agreement by a county for the lease and operation of a nonprofit hospital pending the closing of a separate contract for the purchase of the assets of the hospital violated the Hospital Acquisition Act,

O.C.G.A. § 31-7-400 et seq., because the agreement went into effect as of the day the agreement was signed and notice had not been provided under the Act. *Turpen v. Rabun County Bd. of Comm'rs*, 245 Ga. App. 190, 537 S.E.2d 435 (2000).

CHAPTER 8

CARE AND PROTECTION OF INDIGENT AND ELDERLY PATIENTS

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- 31-8-162. Definitions.
- 31-8-163. Segregated account of revenues raised through provider fees.
- 31-8-164. Provider fee based on patient day; quarterly payment required.
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- 31-8-170. Legislative authority.
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- 31-8-179. (Repealed effective June 30, 2013) Short title.
- 31-8-179.1. (Repealed effective June 30, 2013) Definitions.
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- 31-8-179.3. (Repealed effective June 30, 2013) Assessment of provider payments; to be paid by hospital in quarterly installments; payment recognized as expenditure for indigent or charity care.
- 31-8-179.4. (Repealed effective June 30, 2013) Collection; form; record maintenance; time for payment.
- 31-8-179.5. (Repealed effective June 30, 2013) Use of funds for obtaining federal financial participation for medical assistance payments; matching funds.
- 31-8-179.6. (Repealed effective June 30, 2013) Annual reporting.
- 31-8-179.7. (Repealed effective June 30, 2013) Application of Georgia Medical Assistance Act of 1977.
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- 31-8-197. Annual report of claims statistics.
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- 31-8-201. Applicability; preservation of the state's rights under the Tort Claims Act.

Cross references. — Unfair or deceptive practices toward the elderly, § 10-1-850 et seq. Rights of persons residing in long-term care facilities generally, § 31-8-100 et seq. Determination of responsibility of patients, counties, departments, and others to pay costs of treatment for mental illness, mental retardation, alcoholism, §§ 37-3-121, 37-4-81, 37-7-121 and T. 37, C. 9. Medical

assistance generally, § 49-4-140 et seq. Liability of voluntary health care providers and sponsoring organizations; cumulative immunity; application, § 51-1-29.4.

Editor's notes. — By resolution (Ga. L. 1986, p. 526), the General Assembly requested the Governor to create the Task Force on Funding of Indigent Health Care Programs to review laws and programs regarding indigent health care.

RESEARCH REFERENCES

Am. Jur. Proof of Facts. — False Imprisonment in Connection with Confinement in Nursing Home or Hospital, 40 POF2d 81.

Discrimination in Provision of Medical Services on Basis of Disability, 49 POF3d 1.

Am. Jur. Trials. — Medical and Legal Aspects of Chemical and Physical Restraint in the Nursing Home, 75 Am. Jur. Trials 1.

ALR. — Licensing and regulation of nursing or rest homes, 53 ALR4th 689.

ARTICLE 1

HOSPITAL CARE FOR THE INDIGENT GENERALLY

Cross references. — Powers and duties of counties relating to support of paupers, T. 36, C. 12.

Administrative rules and regulations. — Hospital care for the indigent, Official Compilation of the Rules and Reg-

ulations of the State of Georgia, Department of Human Resources (now the Department of Community Health for these purposes), Public Health, Chapter 290-5-5.

31-8-1. Establishment and purpose of program; administration.

In order to promote and preserve the health of the people of this state, there is established a Hospital Care for the Indigent Program to be administered by the Department of Community Health. The purpose of this program is to assist counties in the purchase of hospital care for persons who are ill or injured and who can be helped by treatment in a hospital but are financially unable to meet the full cost of hospital care from their own resources or from the resources of those upon whom they are legally dependent. The purchase of such hospital care shall be limited to the nonprofit basic cost of hospital care needed for the treatment of the ill or injured, as deemed necessary and ordered by the physician in charge of the case in accordance with this article and the rules, regulations, and standards adopted and promulgated pursuant to this article. (Ga. L. 1957, p. 470, § 1; Code 1933, § 88-2301, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1985, p. 149, § 31; Ga. L. 2009, p. 453, § 1-4/HB 228.)

Law reviews. — For article, "Privatization of Rural Public Hospitals: Implications for Access and Indigent Care," see 47 Mercer L. Rev. 991 (1996). For article,

"Rural Health Care and State Antitrust Reform," see 47 Mercer L. Rev. 1045 (1996).

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Health, § 110.

31-8-2. Definitions.

As used in this article, the term:

(0.5) "Department" means the Department of Community Health.

(1) "Indigent person" means any resident who is ill or injured and who from his own resources or from the resources of those upon whom he is legally dependent is financially unable to meet the full cost of hospital care as prescribed or ordered by a physician. An allegedly indigent person shall not be considered an "indigent person" for the purposes of this article until and unless he shall be certified as an "indigent person" by the governing authority of his county of residence. If the governing authority shall fail or refuse to certify a person as an "indigent person" within five days after the next regular or special meeting of the governing authority receiving notice as to such person's being admitted to a participating hospital, neither the county nor the hospital shall be responsible for any medical costs incurred by such person, but the person himself shall be responsible for all such costs.

(2) "Participating county" means a county whose governing authority, by appropriate action, has agreed to participate in the program, is current with regard to its pro rata share of funds necessary for hospital care for its indigent persons, and is in compliance with this article.

(3) "Participating hospital" means a publicly or privately owned hospital which holds a valid permit issued pursuant to Article 1 of Chapter 7 of this title, which has a physician as chief of staff, and whose governing authority has elected to participate in the program in accordance with this article.

(4) "Physician" means a doctor of medicine duly licensed to practice medicine in this state in accordance with Chapter 34 of Title 43.

(5) "Program" means the Hospital Care for the Indigent Program.

(6) "Resident" means a person who receives health care from a hospital in the county in which he resides and who is in this state for other than temporary or transitory purposes and has lived continu-

ously in the state for a period of not less than six months. (Ga. L. 1957, p. 470, § 2; Code 1933, § 88-2302, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1970, p. 649, § 1; Ga. L. 1983, p. 3, § 22; Ga. L. 2011, p. 705, § 4-8/HB 214.)

The 2011 amendment, effective July 1, 2011, added paragraph (0.5).

2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

Law reviews. — For article on the

31-8-3. Disbursement of state funds to counties.

State funds appropriated to the department for the purpose of carrying out this article shall be expended by the department so as to provide for the administration of this article as it deems necessary and proper and to assist counties in providing hospital care for indigent residents. The department shall establish a graduated matching formula for the disbursement of state funds to assist counties as provided in this article; provided, however, the state share of any participating county budget shall not exceed \$1.00 per capita based on the latest official decennial population count of the United States Bureau of the Census. The department may establish an amount of state funds of the total state and county participating budget to provide hospital care for indigent resident patients who may be hospitalized outside of the county of residency; provided, however, that any unexpended state funds budgeted to provide hospital care for the indigent patient who may be hospitalized outside the county of residency may be reallocated by the department according to the matching formula. (Ga. L. 1957, p. 470, § 4; Code 1933, § 88-2304, enacted by Ga. L. 1964, p. 499, § 1.)

31-8-4. Qualification of counties for participation in program.

In order for a county to qualify for assistance under the program, the governing authority of said county shall have certified that:

- (1) The county elects to participate in the program;
- (2) A local budget providing the funds required by the graduated matching formula has been approved;
- (3) A local administrative agency or officer has been appointed; and
- (4) A screening committee or agency has been appointed to make determinations and certifications relative to indigency of persons applying for assistance as provided for in this article. (Ga. L. 1957, p. 470, § 9; Code 1933, § 88-2309, enacted by Ga. L. 1964, p. 499, § 1.)

31-8-5. Submission of budget by county.

After the implementation of this article, the governing authority of each participating county shall, on or before April 1 of each year, submit

to the department a program budget containing an estimate and supporting data setting forth the amount of moneys needed to provide hospital care for the indigent residents for said county. (Ga. L. 1957, p. 470, § 5; Code 1933, § 88-2305, enacted by Ga. L. 1964, p. 499, § 1.)

31-8-6. Credit for expenditures by county.

Upon certification approved by the department, any participating county may receive credit for direct expenditures made during the period covered by the budget by the county to a hospital or hospitals when such expenditures can be shown to have been made for the care of indigent residents as defined in this Code section. (Ga. L. 1957, p. 470, § 6; Code 1933, § 88-2306, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1985, p. 149, § 31.)

31-8-7. Qualifications for assistance under program; waiver of residence requirements in emergencies.

In order to qualify for assistance under this program, a person must be an indigent resident of this state and must be a person for whom hospital care is not available under any other program. The six-months' residency requirement may be waived if a physician certifies that the illness or injury constitutes an emergency which requires immediate hospital care. (Ga. L. 1957, p. 470, § 8; Code 1933, § 88-2308, enacted by Ga. L. 1964, p. 499, § 1.)

31-8-8. Agreements between department and other governmental agencies or private organizations to obtain funds.

The department is authorized and empowered to enter into agreements with other state departments and boards, agencies of the United States government, local governmental agencies, and voluntary organizations to obtain funds for hospital care that may be available for needy persons; and the department is authorized to administer any funds received under such agreements in conformity with this article; provided, however, that the authority granted in this article shall not prevent the department from complying with 42 U.S.C.A. Section 701, et seq. (Ga. L. 1957, p. 470, § 10; Code 1933, § 88-2310, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1985, p. 149, § 31.)

31-8-9. Use of gifts and donations.

The department is authorized and empowered to accept and expend any and all gifts and donations that may be available to it for the purposes of this article. (Ga. L. 1957, p. 470, § 11; Code 1933, § 88-2311, enacted by Ga. L. 1964, p. 499, § 1.)

31-8-10. Rules and regulations.

The department shall adopt and promulgate such rules and regulations as it deems necessary to carry out this article. (Ga. L. 1957, p. 470, § 7; Code 1933, § 88-2307, enacted by Ga. L. 1964, p. 499, § 1.)

31-8-11. Construction of article.

This article shall not be construed as replacing federal, state, or local programs for the indigent but may supplement such programs for hospital care of the indigent. (Ga. L. 1957, p. 470, § 14; Code 1933, § 88-2312, enacted by Ga. L. 1964, p. 499, § 1.)

ARTICLE 2**HOSPITAL CARE FOR NONRESIDENT INDIGENTS****RESEARCH REFERENCES**

Am. Jur. 2d. — 40A Am. Jur. 2d, Hospitals and Asylums, § 8 et seq.

31-8-30. Findings; purpose of article.

The General Assembly finds that there is an inequitable distribution of the public costs incurred in providing health care for indigent persons who receive such care outside their counties of residence. The publicly supported hospitals providing such health care are frequently not reimbursed for the costs thereby incurred, which either increases the tax burden of citizens supporting such hospitals or increases the charges made to paying patients or causes a combination of both types of such increases. It is the purpose of this article to recognize and provide for the state's responsibility to assist in the payment of cost of care for nonresident indigent patients by providing procedures for the reimbursement of such costs from state funds. (Code 1933, § 88-2301a, enacted by Ga. L. 1979, p. 1234, § 1.)

31-8-31. Definitions.

As used in this article, the term:

(1) "Area of operation" shall, for the purpose of hospital authorities, have the same meaning as defined in paragraph (1) of Code Section 31-7-71 and, for purposes of all other hospitals, shall be the county in which the hospital is located.

(2) "Cost of care" means the cost of services rendered by a hospital at the reimbursement rate currently in effect for the hospital under

the medical assistance program for the needy under Title XIX of the Social Security Act (42 U.S.C.A. Section 1396, et seq.), as amended, but shall not include any portion of such cost which is paid by the indigent patient, by the spouse or a relative of the indigent patient, by insurance, or by any governmental or other public agency pursuant to any federal, state, or local program paying cost of health care for indigent patients, other than the program established by this article.

(2.1) “Department” means the Department of Community Health.

(3) “Fiscal year” means the period beginning on July 1 of each year and ending on June 30 of the immediately following year.

(4) “Fund” means the Nonresident Indigent Health Care Fund created by Code Section 31-8-33.

(5) “Health care” means the following services for nonresident inpatients and outpatients:

(A) Emergency care or treatment;

(B) Treatment for conditions of pregnancy and treatment of the newborn infant from the time of birth until the time of discharge from the hospital;

(C) Treatment for a potentially disabling illness or injury when treatment for such illness or injury is not available for indigent patients in the county of residence of the patient; and

(D) Treatment for any combination of the foregoing.

(6) “Hospital” means a hospital which is permitted to operate by the department pursuant to Article 1 of Chapter 7 of this title.

(7) “Hospital authority” means a hospital authority created pursuant to Article 4 of Chapter 7 of this title.

(8) “Indigent patient” means a nonresident patient who is certified as an indigent pursuant to Code Section 31-8-32.

(9) “Nonresident patient” means a person who receives health care from a hospital and who is a resident of this state but who is not a resident of the area of operation of the hospital providing such health care. (Code 1933, § 88-2302a, enacted by Ga. L. 1979, p. 1234, § 1; Ga. L. 1985, p. 149, § 31; Ga. L. 2011, p. 705, § 4-9/HB 214.)

The 2011 amendment, effective July 1, 2011, added paragraph (2.1). 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

Law reviews. — For article on the

31-8-32. Determination of indigency.

(a) The commissioner of community health shall adopt state-wide standards to determine indigency for the purposes of this article. To the extent practicable, such standards shall be based on similar standards adopted for the purpose of determining the ability to pay of patients receiving services in state hospitals as authorized by state law, as now or hereafter enacted, governing responsibility for payment of cost of care for health care services rendered by state hospitals.

(b) Within 30 days after receiving the standards provided by the commissioner pursuant to subsection (a) of this Code section, the governing authority of each county, by resolution, shall designate a person, to be known as the health care advisory officer of the county, to make a determination of indigency for the residents of the county in accordance with the standards promulgated pursuant to subsection (a) of this Code section. The health care advisory officer shall carry out such additional duties as may be assigned to him by the governing authority of the county. It shall be the duty of the governing authority of each county to mail a copy of such resolution to the chief administrative officer of each hospital within 15 days after its adoption. The governing authority of any county may change the person designated as the health care advisory officer, but any such change shall be accomplished by resolution of the governing authority, and a copy of the resolution making such change shall be mailed to the chief administrative officer of each hospital within 15 days after its adoption.

(c) When a nonresident patient receives health care from a hospital and when such patient claims inability to pay cost of care because of indigency, the chief administrative officer of the hospital shall notify, in writing, the health care advisory officer of the county of residence of the patient. Such notification shall request a determination of indigency of the patient. As soon as practicable after receiving such notification but not later than 30 days thereafter, the health care advisory officer of the county shall notify the chief administrative officer of the hospital of his determination. If the health care advisory officer determines that the patient is indigent, such notification shall constitute a certification of such indigency, and the expenditures for cost of care of such nonresident indigent patient shall be maintained on the records of the hospital for the purposes of Code Section 31-8-34.

(d) If the health care advisory officer of a county fails to respond to a request for a determination of indigency from a hospital providing health care for such patient within the time limitation provided by subsection (c) of this Code section, the county of residence of the patient shall be liable for the payment of cost of care of such patient. In such event, the hospital providing health care for the nonresident patient

may bill the county of residence of the patient for the amount of his cost of care, and it shall be the duty of the governing authority of such county to pay the hospital the amount billed.

(e) To the end that the certifications of indigency required by subsection (c) of this Code section may be expedited, it shall be the duty of each county health care advisory officer to establish and maintain files showing the names of county residents determined to be indigent.

(f) It shall be the duty of the commissioner to devise such standard forms as may be necessary or desirable to administer this Code section uniformly. It shall be the duty of counties, health care advisory officers, and hospitals to use the forms promulgated by the commissioner pursuant to this subsection. (Code 1933, § 88-2303a, enacted by Ga. L. 1979, p. 1234, § 1; Ga. L. 2009, p. 453, § 1-6/HB 228.)

31-8-33. Creation of fund.

There is created the Nonresident Indigent Health Care Fund for the purpose of making payments therefrom to hospitals to reimburse such hospitals for the cost of care of nonresident indigent patients. Such fund shall be made up of appropriations made thereto by the General Assembly, as provided in this article. (Code 1933, § 88-2304a, enacted by Ga. L. 1979, p. 1234, § 1; Ga. L. 1991, p. 94, § 31.)

31-8-34. Maintenance of records; certification of cost of care; determination of amount of fund.

(a) Each hospital shall maintain accurate records of its cost of care for providing health care services for nonresident indigent patients. As soon as practicable after the close of each quarter of each fiscal year and within not more than 30 days after the close thereof, the chief administrative officer of each hospital shall certify to the commissioner the total cost of care incurred by the hospital in providing health care to nonresident indigent patients for the immediately preceding quarter.

(b) For the 1980-81 fiscal year, the commissioner shall estimate the state-wide cost of care for nonresident indigent patients by annualizing the total amount shown on the first quarterly submissions to him under subsection (a) of this Code section of cost of care for nonresident indigent patients and by adjusting the annualized amount by a factor, not to exceed 10 percent of such amount, which the commissioner determines to be a reasonable estimate of anticipated increases in the cost of care for nonresident indigent patients.

(c) For the 1981-82 fiscal year and for each fiscal year thereafter, the commissioner shall estimate the state-wide cost of care for nonresident indigent patients by annualizing the total payments, as provided by

Code Section 31-8-35, to hospitals from the fund during the first quarter of the immediately preceding fiscal year, adjusted by a factor which, based on the experience of the fund, the commissioner determines to be a reasonable estimate of anticipated increases or decreases in the cost of care for nonresident indigent patients; but no estimated increase in such cost shall exceed 10 percent of the annualized amount. (Code 1933, § 88-2305a, enacted by Ga. L. 1979, p. 1234, § 1.)

31-8-35. Payments from fund to hospitals.

For each fiscal year, beginning with the 1980-81 fiscal year, payments to hospitals for cost of care of nonresident indigent patients shall be made from the fund. Beginning with the certifications made after the close of the first quarter of the 1980-81 fiscal year, the quarterly certifications of cost of care for nonresident indigent patients made by hospitals pursuant to subsection (a) of Code Section 31-8-34 shall constitute requests for payments from the fund to reimburse such hospitals for the cost of care. Within 30 days after receiving any such request, the commissioner shall authorize the state treasurer to issue a check to the hospital submitting the request for the payment from the fund of the amount requested. (Code 1933, § 88-2307a, enacted by Ga. L. 1979, p. 1234, § 1; Ga. L. 1993, p. 1402, § 18; Ga. L. 2010, p. 863, § 3/SB 296.)

The 2010 amendment, effective July 1, 2010, substituted “state treasurer” for “director of the Office of Treasury and Fiscal Services” in the middle of the last sentence.

31-8-36. State appropriations to fund.

(a) For each fiscal year, beginning with the 1980-81 fiscal year, the commissioner shall make a request for appropriation of the amount determined under Code Section 31-8-34 as the state-wide cost of care for nonresident indigent patients in the budget of the Department of Community Health under the category: “Nonresident Indigent Health Care Fund.” The budget shall cite this article as the authority for such request and shall make such additional explanation of the request as the commissioner deems appropriate.

(b) In the event the General Assembly fails to appropriate funds in accordance with the budget request made pursuant to subsection (a) of this Code section or fails to appropriate the full amount requested, the payments to hospitals under Code Section 31-8-35 shall be reduced pro rata in accordance with the amount actually available to the fund. (Code 1933, § 88-2306a, enacted by Ga. L. 1979, p. 1234, § 1; Ga. L. 2009, p. 453, § 1-4/HB 228.)

31-8-37. Compliance with this article contingent upon appropriation.

On and after July 1, 1987, hospitals shall not be required to comply with the provisions of this article unless the General Assembly appropriates funds in an amount determined as the state-wide cost of care for nonresident indigent patients as provided for in Code Section 31-8-36. (Code 1981, § 31-8-37, enacted by Ga. L. 1987, p. 1494, § 3.)

ARTICLE 2A

HOSPITAL CARE FOR PREGNANT WOMEN

Cross references. — Newborn Baby and Mother Protection Act, § 33-24-58.

Administrative rules and regulations. — Emergency medical services to pregnant women, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Human Resources (now the Department of Commu-

nity Health for these purposes), Family and Children Services, Chapter 290-2-26.

Law reviews. — For article, "State of Emergency: Why Georgia's Standard of Care in Emergency Rooms is Harmful to Your Health," see 45 Ga. L. Rev. 275 (2010).

JUDICIAL DECISIONS

Constitutionality of article. — An attack on O.C.G.A. Art. 2A, Ch. 8, T. 31, as special legislation fails since the statute operates statewide and is applicable to all hospitals authorized to operate as provided in the statute. *Terrell County v. Albany/Dougherty Hosp. Auth.*, 256 Ga. 627, 352 S.E.2d 378 (1987).

When a county argued that O.C.G.A. Art. 2A, Ch. 8, T. 31 was violative of Ga. Const. 1983, Art. IX, Sec. II, Para. III (b)(1), which prohibits a county from exercising certain enumerated powers inside the boundaries of any municipality or

other county except by contract with the entity affected, since the county had no contract with the political subdivision within which a hospital seeking reimbursement under O.C.G.A. § 31-8-43(c) was located, it could not constitutionally pay the claims of the hospital, it was held that the words "unless otherwise provided by law," prefacing the constitutional prohibition apply to a general law such as O.C.G.A. § 31-8-43. *Terrell County v. Albany/Dougherty Hosp. Auth.*, 256 Ga. 627, 352 S.E.2d 378 (1987).

31-8-40. Legislative findings and purpose.

The General Assembly finds that Georgia's high rates of infant mortality and morbidity are costly to the state in terms of human suffering and of expenditures for long-term institutionalization, special education, and medical care. It is well documented that appropriate care during pregnancy and delivery can prevent many of the expensive, disabling problems our children experience. The State of Georgia is making progress in improving services and funding. However, the General Assembly is concerned that some women continue to be refused service for financial reasons at hospitals when they request admission after labor has begun. It is the purpose of this article to assure that:

(1) No hospital denies available, appropriate emergency services to a woman who has not made prior arrangements for the payment of the delivery and who seeks hospital care for the safe delivery of her child;

(2) Counties assume a share of the responsibility in meeting this critical need for their residents who receive such care when no other source of payment from public or private sources is available; and

(3) Women receiving such care and other persons specified in this article assume certain responsibilities with regard to payment for such care after it is rendered, but it is not the purpose of this article to establish a general health insurance program for all pregnant indigent women. (Code 1981, § 31-8-40, enacted by Ga. L. 1984, p. 1389, § 1; Ga. L. 1985, p. 829, § 3.)

Cross references. — Safe place for newborns, T. 19, C. 10A.

Law reviews. — For article, “State of Emergency: Why Georgia’s Standard of Care in Emergency Rooms is Harmful to

Your Health,” see 45 Ga. L. Rev. 275 (2010). For annual survey of law on trial practice and procedure, see 62 Mercer L. Rev. 339 (2010).

JUDICIAL DECISIONS

Cited in *Gliemmo v. Cousineau*, 287 Ga. 7, 694 S.E.2d 75 (2010).

31-8-41. Definitions.

As used in this article, the term:

(1) “Cost of care” means the cost of services rendered by a hospital for care required to be provided thereby under this article, and for services rendered by a physician in connection therewith, at the lesser of the actual charges or the reimbursement rate currently in effect for the hospital and physician under the medical assistance program for the needy under Title XIX of the Social Security Act (42 U.S.C.A. Section 1396, et seq.), as amended, but shall not include any portion of such cost which is paid by the indigent patient, by the spouse or a relative of the indigent patient, by the father of the child, by insurance, or by any governmental or other public agency pursuant to any federal, state, or local program paying cost of health care for indigent patients, other than the program established by this article. The Medicaid reimbursement rate for services under this article shall not be adjusted for outlier payment. Payments actually received by a hospital or physician, when made by the patient, the patient’s spouse, family member, father of the patient’s child, or by insurance, the medical assistance program for the needy, any similar federal, state, or local program, or any other third-party payor other

than a county, shall constitute payment to the hospital or physician, respectively, of the payment amount so received and exclude that amount from the definition of “cost of care.” When a hospital renders care to a woman who is not a resident of the county in which that hospital is located and that care is required to be provided under this article but there is within the county of residence of that woman a hospital which usually and customarily provides that care, “cost of care” means the lesser of the actual charges for the care actually rendered or the Medicaid reimbursement rate currently in effect for such care, which Medicaid reimbursement rate shall be that Medicaid rate for such care in the hospital of the woman’s county of residence, unless there is more than one such hospital, in which event the rate shall be the average Medicaid rate for such care in all hospitals of the woman’s county of residence.

(1.1) “Department” means the Department of Community Health.

(2) “Hospital” means a hospital which is permitted to operate by the department pursuant to Article 1 of Chapter 7 of this title.

(3) “Indigency” means the inability of a patient or other person to pay the entire cost of care determined in accordance with subsection (a) of Code Section 31-8-43.

(4) “Patient” means a pregnant woman who receives services under this article.

(5) “Resident of the county” means a person who is domiciled in the county as determined pursuant to Chapter 2 of Title 19. (Code 1981, § 31-8-41, enacted by Ga. L. 1984, p. 1389, § 1; Ga. L. 1985, p. 829, § 3; Ga. L. 2011, p. 705, § 4-10/HB 214.)

The 2011 amendment, effective July 1, 2011, added paragraph (1.1). 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

Law reviews. — For article on the

31-8-42. Requirement of hospitals with emergency services to provide care to pregnant women in labor.

Any hospital which operates an emergency service shall be required to provide the appropriate, necessary emergency services to any pregnant woman who is a resident of this state and who presents herself in active labor to the hospital, if those services are usually and customarily provided in that facility, which services shall be provided within the scope of generally accepted practice based upon the information furnished the hospital by the pregnant woman, including such information as the pregnant woman reveals concerning her prenatal care, diet, allergies, previous births, general health information, and other such information as the pregnant woman may furnish the hospital. If, in the medical judgment of the physician responsible for the emergency

service, the hospital must transfer the patient because the hospital is unable to provide appropriate treatment, the hospital where the patient has presented herself shall:

- (1) Within the capabilities of the hospital provide such emergency services as the circumstances require, which services shall be provided within the scope of generally accepted practice based upon the information furnished the hospital by the pregnant woman, including such information as the pregnant woman reveals concerning her prenatal care, diet, allergies, previous births, general health information, and other such information as the pregnant woman may furnish the hospital;
- (2) Contact an appropriate receiving hospital and notify such hospital that the patient is in transit;
- (3) Arrange suitable transportation for the patient if necessary; and
- (4) Send to the receiving hospital any available information on the patient's history and condition.

The transfer shall not be authorized until the physician considers the patient sufficiently stabilized for transport. (Code 1981, § 31-8-42, enacted by Ga. L. 1984, p. 1389, § 1; Ga. L. 1985, p. 829, § 3.)

JUDICIAL DECISIONS

Cited in *Terrell County v. Albany/Dougherty Hosp. Auth.*, 256 Ga. 627, 352 S.E.2d 378 (1987).

31-8-43. Determination of indigency; payment of services provided under Code Section 31-8-42 for indigent patients by county; records; administration.

(a) The commissioner of community health shall adopt state-wide standards to determine indigency for the purposes of this article, which standards shall be based upon and consistent with 125 percent of the federal poverty level as it exists on May 1, 1985. These standards shall further provide for legal liability, based upon ability to pay some reasonable percentage of cost of care, for patients and other persons legally liable for the patients' cost of care if those patients or other persons do not meet the indigency standards based upon less than 100 percent of the federal poverty level but do meet those standards based upon between 100 and 125 percent of the federal poverty level, as such level exists on May 1, 1985.

(b) Within 30 days after receiving the standards provided by the commissioner pursuant to subsection (a) of this Code section, the

governing authority of each county, by resolution, shall designate a person, to be known as the health care advisory officer of the county, to make a determination of indigency for the residents of the county in accordance with the standards promulgated pursuant to subsection (a) of this Code section. The health care advisory officer shall carry out such additional duties as may be assigned to him by the governing authority of the county. It shall be the duty of the governing authority of each county to mail a copy of such resolution to the commissioner or the commissioner's designee within 15 days after its adoption. The governing authority of any county may change the person designated as the health care advisory officer, but any such change shall be accomplished by resolution of the governing authority, and a copy of the resolution making such change shall be mailed to the commissioner or the commissioner's designee within 15 days after its adoption. If a county fails or refuses either to designate a health care advisory officer or to provide to the commissioner or the commissioner's designee the required notification of the county's designation of such officer, the county governing authority shall be deemed to be such officer for purposes of this article.

(c) When a patient receives health care from a hospital or physician, which care that hospital is required to provide the patient under Code Section 31-8-42, and when such patient claims indigency, the chief administrative officer of the hospital shall determine whether any portion of the cost of services may be paid by the medical assistance program for the needy under Title XIX of the Social Security Act, by insurance, or by any other governmental or public agency pursuant to any federal, state, or local program and provide written notification of such determination to the health care advisory officer of the county of residence of the patient. Such notification shall include a certification by the chief administrative officer of the hospital that an appropriate investigation has been made and that it has been determined that no portion of the cost of services may be paid by the medical assistance program for the needy under Title XIX of the Social Security Act, by insurance, or by any other governmental or public agency pursuant to any federal, state, or local program or a certification that an appropriate investigation has been made and that a portion of the cost of services may be paid from such sources. If it is determined that a portion of the cost of services may be paid from such sources, then the notification shall include a certification of the amount which may be so paid. Such notification shall also request a determination of indigency of the patient. As soon as practicable after receiving such notification but not later than 60 days thereafter, the health care advisory officer of the county shall notify the chief administrative officer of the hospital of his determination. If the health care advisory officer determines that the patient meets the indigency standards or if the health care advisory

officer of a county fails to respond to a request for a determination of indigency from a hospital providing health care for such patient within the time limitation provided by this subsection, the county of residence of the patient shall be liable for the payment of cost of care of such patient in each hospital rendering the emergency services. In such event, each hospital and physician providing the emergency health care for the patient may bill the county of residence of the patient for the amount of the patient's cost of care. It shall be the duty of the governing authority of such county to pay the hospital and physician that billed amount plus, if that billed amount is not paid by the county within 120 days after the mailing of a request for a determination of indigency, interest on the billed amount at the rate specified in Code Section 48-2-40 for unpaid taxes.

(d) To the end that the certifications of indigency required by subsection (c) of this Code section may be expedited, it shall be the duty of each county health care advisory officer to establish and maintain files showing the names of county residents whom that officer has determined to be indigent.

(e) It shall be the duty of the commissioner to devise such standard forms as may be necessary or desirable to administer this Code section uniformly. It shall be the duty of counties, health care advisory officers, and hospitals to use the forms promulgated by the commissioner pursuant to this subsection.

(f) To the extent practicable and consistent with appropriate health care, the commissioner and the health care advisory officer shall encourage the use of hospitals located in the county of residence of the pregnant woman. (Code 1981, § 31-8-43, enacted by Ga. L. 1984, p. 1389, § 1; Ga. L. 1985, p. 829, § 3; Ga. L. 1991, p. 94, § 31; Ga. L. 1992, p. 6, § 31; Ga. L. 2009, p. 453, § 1-6/HB 228.)

JUDICIAL DECISIONS

Constitutionality. — When a county argued that O.C.G.A. § 31-8-43 was violative of Ga. Const. 1983, Art. IX, Sec. II, Para. III(b)(1), which prohibits a county from exercising certain enumerated powers inside the boundaries of any municipality or other county except by contract with the entity affected, since the county had no contract with the political subdivision within which a hospital seeking reimbursement under subsection (c) of O.C.G.A. § 31-8-43 was located, it could not constitutionally pay the claims of the hospital, it was held that the words "unless otherwise provided by law," prefacing the constitutional prohibition apply to a

general law such as O.C.G.A. § 31-8-43. *Terrell County v. Albany/Dougherty Hosp. Auth.*, 256 Ga. 627, 352 S.E.2d 378 (1987).

Claims presentation requirements of § 36-11-1 inapplicable. — Requirements of O.C.G.A. § 36-11-1 on presenting claims against a county apply to claims arising from contract and do not apply to a claim when the right to and amount of the claim is fixed by law as when a hospital furnishes emergency services to pregnant indigent residents of the county under O.C.G.A. Art. 2A, Ch. 8, T. 31. *Terrell County v. Albany/Dougherty Hosp. Auth.*, 256 Ga. 627, 352 S.E.2d 378 (1987).

Reasonableness of indigency standards. — Statewide standards of indigency adopted by the Commissioner of Human Resources are not arbitrary, capricious, or otherwise unreasonable. *Terrell County v. Albany/Dougherty Hosp. Auth.*, 256 Ga. 627, 352 S.E.2d 378 (1987).

Indigency not waived by patients' execution of promissory notes. — Although patients signed and delivered promissory notes to the hospital, the execution of the notes by the patients did not amount to a waiver of indigency on the patients' part nor indirectly amount to a waiver on the part of the hospital nor did the execution of the notes in any way satisfy the obligation of the county to provide medical service for indigent per-

sons. *Terrell County v. Albany/Dougherty Hosp. Auth.*, 256 Ga. 627, 352 S.E.2d 378 (1987).

Validity of rules and regulations. — Argument that the regulations adopted by the Commissioner of Human Resources under O.C.G.A. § 31-8-43 are invalid because the Commissioner expanded the scope of the act by including intra partum and post partum care of the mother and a pediatric examination of the newborn is invalid. The General Assembly may delegate to administrative offices or agencies the authority to make rules and regulations necessary to effectuate statutes of the General Assembly. *Terrell County v. Albany/Dougherty Hosp. Auth.*, 256 Ga. 627, 352 S.E.2d 378 (1987).

31-8-43.1. Extent of patient's liability for costs; required cooperation of patient with county; liability of father for costs; action by county to recover costs or challenge determination of liability.

(a) A patient who receives services under this article shall, by accepting such services, be deemed to have agreed to:

(1) Be liable to any county which pays all or any part of that patient's cost of care for the entire amount so paid by that county, except that a patient who meets the indigency standards based upon 100 to 125 percent of the federal poverty level shall be liable for an amount which is the greater of \$100.00 or the reasonable percentage of costs for which the patient is liable under subsection (a) of Code Section 31-8-43 and a patient who meets the indigency standards based upon less than 100 percent of the federal poverty level shall be liable for \$100.00 of those costs, but liability under this subsection shall never exceed the county's payments for cost of care;

(2) Have made an assignment to that county paying any part of that patient's cost of care for any benefits for such care for which the patient is eligible from a third party up to the amount actually paid and cooperate with the county in obtaining any such benefits to repay the county;

(3) Cooperate with any county paying any part of that patient's cost of care in identifying the father of a child delivered to the patient by a hospital acting in compliance with this article and in seeking to obtain from such father repayment of that portion of the county's payment which, under the indigency standards, that father is able to repay; and

(4) Cooperate with any county paying any part of that patient's cost of care in applying and qualifying for the medical assistance program for the needy under Title XIX of the Social Security Act or any other federal, state, or local governmental program for which the patient may be eligible.

(b) The failure of a patient to cooperate as required by paragraphs (2), (3), and (4) of subsection (a) of this Code section shall render the patient and any person liable for other expenses of the patient, including but not limited to the parents of a minor patient and the spouse of a patient, liable to the county for all payments which that county makes for the patient's cost of care. Failure of a patient to cooperate as required by paragraphs (2), (3), and (4) of subsection (a) of this Code section shall not be a valid ground to deny the patient services otherwise required to be provided under this article unless the patient at the time of admission refuses to sign a document, in such form as the commissioner shall prescribe and provide, acknowledging notification that the patient's receiving services shall constitute an agreement to the terms of paragraphs (1) through (4) of subsection (a) of this Code section unless waived by the county health care advisory officer.

(c) Except as provided in subsection (b) of this Code section, the father of a patient's child who is delivered by a hospital as required by this article and any other person legally responsible for other expenses of the patient shall be liable to the county which pays the patient's cost of care to the same extent the patient is liable therefor under paragraph (1) of subsection (a) of this Code section. This obligation to make repayment shall be in addition to any other obligation imposed by law.

(d) The county may bring a civil action to recover, from any person liable therefor under this Code section, those payments which the county has made for a patient's cost of care to the extent of the liability imposed by this Code section but in no event may recover more than the county paid for such costs of care.

(e) A county or any person aggrieved by any determination under this article that such county or person is liable for a patient's cost of care may bring a de novo civil action in superior court challenging that determination. (Code 1981, § 31-8-43.1, enacted by Ga. L. 1985, p. 829, § 3; Ga. L. 1991, p. 94, § 31.)

31-8-44. Immunity of hospital or health care provider from liability.

No physician, nurse, or other such medical assistant, nor the hospital or any of its agents or employees shall be guilty of malpractice or civilly liable therefor for treatment rendered under this article unless the physician, nurse, or other medical assistant, or the hospital, its agent,

or employee has been grossly negligent in the provision of such services or has willfully failed to comply with the provisions of this article. No action shall be brought in connection with treatment rendered under this article without a specific allegation of gross negligence or willful failure to comply. (Code 1981, § 31-8-44, enacted by Ga. L. 1984, p. 1389, § 1; Ga. L. 1985, p. 829, § 3.)

Cross references. — Actions for medical malpractice generally, § 51-1-27.

31-8-45. Availability of cause of action for patient wrongfully denied care.

If a hospital fails or refuses to provide treatment or services pursuant to the provisions of Code Section 31-8-42, a person aggrieved by such failure or refusal shall have a cause of action against the hospital for damages and for such other relief as the court having jurisdiction of the action deems proper. No person shall be prohibited from maintaining such an action for failure to exhaust any rights to administrative relief. (Code 1981, § 31-8-45, enacted by Ga. L. 1984, p. 1389, § 1; Ga. L. 1985, p. 829, § 3.)

31-8-46. Investigation; penalties; rules and regulations.

(a) If the department receives notice that a violation by a hospital of Code Section 31-8-42 is in progress, the department shall immediately order an investigation to determine whether or not there has been a violation and upon finding that a violation has occurred shall immediately order the hospital to comply with that Code section.

(b) If a hospital violates Code Section 31-8-42, the department shall assess a civil penalty of \$500.00 for each such violation. Any such civil penalty shall be imposed by the department only after notice and hearing as provided in Article 1 of Chapter 5 of this title. Any person or facility subject to a civil penalty under this Code section is entitled to judicial review in accordance with Article 1 of Chapter 5 of this title. All civil penalties recovered by the department under this Code section shall be paid into the general fund of the state treasury.

(c) Any hospital held to be in violation of Code Section 31-8-42 more than three times within any 12 month period shall be subject to suspension or revocation of license by the Department of Community Health.

(d) The Department of Community Health is authorized and directed to promulgate appropriate rules and regulations for the enforcement of this article.

(e) Nothing in this article shall be construed to preempt any other law or to deny to any individual any rights or remedies which are provided by or under any other law. (Code 1981, § 31-8-46, enacted by Ga. L. 1984, p. 1389, § 1; Ga. L. 1985, p. 829, § 3; Ga. L. 2008, p. 12, § 2-27/SB 433; Ga. L. 2009, p. 453, § 1-4/HB 228.)

ARTICLE 3

LONG-TERM CARE OMBUDSMAN PROGRAM

Cross references. — Protective services for abused, neglected, or exploited disabled adults, T. 30, C. 5. Further provisions regarding reporting of abuse or exploitation of residents of long-term care facilities, § 31-8-80 et seq. Public assis-

tance for the elderly generally, § 49-4-30 et seq.

Law reviews. — For note on 1995 amendments of Code sections in this article, see 12 Ga. St. U.L. Rev. 241 (1995).

31-8-50. Declaration of policy.

The General Assembly finds that a significant number of older citizens of this state reside in long-term care facilities in this state and, because of their isolated and vulnerable condition, are more dependent on others for their protection and care. It is the intent of the General Assembly to protect and improve the quality of care and life for residents through the promotion of community involvement in long-term care facilities and by the establishment of a process to resolve complaints and problems of residents. It is the further intent of the General Assembly that the department, within available resources and pursuant to its duties under the Older Americans Act of 1965, as amended, ensure that the quality of care and life for such residents is maintained, that necessary reports are made and that, where necessary, corrective action is taken at the departmental level. (Code 1933, § 88-1902a, enacted by Ga. L. 1979, p. 1240, § 1.)

U.S. Code. — The Older Americans Act of 1965, as amended, referred to in this

Code section, is codified as 42 U.S.C. § 3001 et seq.

JUDICIAL DECISIONS

Cited in Brogdon v. National Healthcare Corp., 103 F. Supp. 2d 1322 (N.D. Ga. 2000).

31-8-51. Definitions.

As used in this article, the term:

(1) "Community ombudsman" means a person certified as a community ombudsman pursuant to Code Section 31-8-52.

(1.1) “Department” means the Department of Human Services.

(2) “Long-term care facility” means any skilled nursing home, intermediate care home, assisted living community, or personal care home now or hereafter subject to regulation and licensure by the Department of Community Health.

(3) “Resident” means any person who is receiving treatment or care in any long-term care facility who seeks admission to such facility or who has been discharged or transferred from such facility.

(4) “State ombudsman” means the state ombudsman established under Code Section 31-8-52. (Code 1933, § 88-1901a, enacted by Ga. L. 1979, p. 1240, § 1; Ga. L. 2009, p. 453, § 2-16/HB 228; Ga. L. 2011, p. 227, § 18/SB 178.)

The 2011 amendment, effective July 1, 2011, inserted “assisted living community,” in paragraph (2).

to Code Section 28-9-5, in 2009, “Department of Community Health” was substituted for “department” in paragraph (2).

Code Commission notes. — Pursuant

31-8-52. Establishment of long-term care ombudsman program.

Pursuant to the Older Americans Act of 1965 (P.L. 89-73, 79 Stat. 219), as amended, and as a condition of receiving funds under that act for various programs for older citizens of this state, the Department of Human Services has been required to establish and operate a long-term care ombudsman program. In order to receive such funds, the department has already established a position of state ombudsman within the state Office of Special Programs. The state ombudsman shall be under the direct supervision of the commissioner of human services or his or her designee and shall be given the powers and duties hereafter provided by this article. The state ombudsman shall be a person qualified by training and experience in the field of aging or long-term care, or both. The state ombudsman shall promote the well-being and quality of life of residents in long-term care facilities and encourage the development of community ombudsman activities at the local level. The state ombudsman may certify community ombudsmen and such certified ombudsmen shall have the powers and duties set forth in Code Sections 31-8-54 and 31-8-55. The state ombudsman shall require such community ombudsmen to receive appropriate training as determined and approved by the department prior to certification. Such training shall include an internship of at least seven working days in a nursing home and at least three working days in a personal care home. Upon certification, the state ombudsman shall issue an identification card which shall be presented upon request by community ombudsmen whenever needed to carry out the purposes of this article. Two years after first being certified and every two years thereafter, each such community ombudsman, in order to carry out his or her duties under

this article, shall be recertified by the state ombudsman as continuing to meet the department's standards as community ombudsman. (Code 1933, § 88-1903a, enacted by Ga. L. 1979, p. 1240, § 1; Ga. L. 1995, p. 1239, § 1; Ga. L. 2009, p. 453, § 2-2/HB 228; Ga. L. 2011, p. 705, § 5-13/HB 214.)

The 2011 amendment, effective July 1, 2011, inserted "of human services" in the third sentence of this Code section.

U.S. Code. — The Older Americans Act of 1965, as amended, referred to in this

Code section, is codified as 42 U.S.C. § 3001 et seq.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

31-8-53. Duties of state ombudsman.

The state ombudsman shall:

(1) Establish policies and procedures, subject to approval by the commissioner of human services, for receiving, investigating, referring, and attempting to resolve complaints made by or on behalf of residents of long-term care facilities concerning any act, omission to act, practice, policy, or procedure that may adversely affect the health, safety, or welfare of any resident;

(2) Investigate and make reports and recommendations to the department and other appropriate agencies concerning any act or failure to act by any government agency with respect to its responsibilities and duties in connection with long-term care or residents of long-term care facilities;

(3) Establish a uniform state-wide reporting system to record data about complaints and conditions in long-term care facilities and shall collect and analyze such data in order to identify significant problems affecting the residents of such facilities;

(4) Promote the development of community ombudsmen activities and provide technical assistance as necessary; and

(5) Make an annual written report, documenting the types of complaints and problems reported by residents, to the director of the Office of Special Programs for his recommendations to the commissioner concerning needed policy and regulatory and legislative changes. (Code 1933, § 88-1904a, enacted by Ga. L. 1979, p. 1240, § 1; Ga. L. 1991, p. 94, § 31; Ga. L. 2009, p. 453, § 2-4/HB 228.)

31-8-54. Duties of community ombudsmen.

Pursuant to policies and procedures established by the state ombudsman, the community ombudsmen shall:

(1) Learn about the general conditions affecting residents of long-term care facilities and work for the best interest of these residents;

(2) Receive, investigate, and attempt to resolve complaints made by or on behalf of residents of long-term care facilities;

(3) Collect data about the number and types of complaints handled; and

(4) Report regularly to the state ombudsman about the data collected and the activities of the community ombudsmen. (Code 1933, § 88-1905a, enacted by Ga. L. 1979, p. 1240, § 1.)

31-8-55. Entry and investigative authority; cooperation of government agencies; communication with residents.

(a) The state ombudsman or community ombudsman, on his or her initiative or in response to complaints made by or on behalf of residents of long-term care facilities, may conduct investigations in matters within his or her powers and duties as provided by this article.

(b) The state ombudsman or community ombudsman shall have the authority to enter any long-term care facility and shall use his or her best efforts to enter such facility during normal visiting hours. Upon entering the long-term care facility, the ombudsman shall notify the administrator or, in the absence of the administrator, the person in charge of the facility, before speaking to any residents. After notifying the administrator or the person in charge of the facility, the ombudsman may communicate privately and confidentially with residents of the facility, individually or in groups. The ombudsman shall have access to the medical and social records of any resident if:

(1) The ombudsman has the permission of the resident or the legal representative or guardian of the resident;

(2) The resident is unable to consent to the review and has no legal representative or guardian; or

(3) There is a guardian of the person of the resident and that guardian refuses to permit access to the records necessary to investigate a complaint, and:

(A) There is reasonable cause to believe that the guardian is not acting in the best interests of the resident; and

(B) A community ombudsman obtains the approval of the state ombudsman.

As used in this Code section, the term "legal representative" means an agent under a valid power of attorney, provided that the agent is acting

within the scope of his or her agency; an agent under a durable power of attorney for health care or health care agent under an advance directive for health care; or an executor, executrix, administrator, or administratrix of the estate of a deceased resident. The ombudsman shall have the authority to inspect the physical plant and have access to the administrative records, policies, and documents of the facility to which the residents have or the general public has access. Entry and investigation provided by this Code section shall be conducted in a manner which will not significantly disrupt the provision of nursing or other care to residents.

(c) The state ombudsman or community ombudsman shall identify himself or herself as such to the resident, and the resident shall have the right to communicate or refuse to communicate with the ombudsman.

(d) The resident shall have the right to participate in planning any course of action to be taken on his or her behalf by the state ombudsman or community ombudsman, and the resident shall have the right to approve or disapprove any proposed action to be taken on his or her behalf by such ombudsman.

(e) The state ombudsman and community ombudsman shall have authority to obtain from any government agency, and such agency shall provide, such cooperation and assistance, services, data, and access to files and records as will enable the ombudsman properly to perform his or her duties and exercise his or her powers, provided such information is not privileged under any law.

(f) Where the subject of the investigation involves suspected abuse, neglect, or exploitation of a resident by his or her guardian, the state ombudsman or community ombudsman shall have the authority to communicate with the resident in a private and confidential setting notwithstanding any objection by the guardian to such meeting and communication. (Code 1933, § 88-1906a, enacted by Ga. L. 1979, p. 1240, § 1; Ga. L. 1995, p. 1239, § 1.1; Ga. L. 2007, p. 133, § 11/HB 24.)

Editor's notes. — Ga. L. 2007, p. 133, § 11/HB 24, not codified by the General Assembly, provides: "(a) The General Assembly has long recognized the right of the individual to control all aspects of his or her personal care and medical treatment, including the right to insist upon medical treatment, decline medical treatment, or direct that medical treatment be withdrawn. In order to secure these rights, the General Assembly has adopted and amended statutes recognizing the living will and health care agency and provided statutory forms for both documents.

"(b) The General Assembly has determined that the statutory forms for the living will and durable power of attorney for health care are confusing and inconsistent and that the statutes providing for the living will and health care agency contain conflicting concepts, inconsistent and out-of-date terminology, and confusing and inconsistent requirements for execution. In addition, there is a commendable trend among the states to combine the concepts of the living will and health care agency into a single legal document.

"(c) The General Assembly recognizes

that a significant number of individuals representing the academic, medical, legislative, and legal communities, state officials, ethics scholars, and advocacy groups worked together to develop the advance directive for health care contained in this Act, and the collective intent was to create a form that uses understandable and everyday language in order to encourage more citizens of this state to execute advance directives for health care.

“(d) The General Assembly finds that the clear expression of an individual’s

decisions regarding health care, whether made by the individual or an agent appointed by the individual, is of critical importance not only to citizens but also to the health care and legal communities, third parties, and families. In furtherance of these purposes, the General Assembly enacts a new Chapter 32 of Title 31, setting forth general principles governing the expression of decisions regarding health care and the appointment of a health care agent, as well as a form of advance directive for health care.”

31-8-56. Resolution of complaints.

(a) Following an investigation, the state ombudsman or community ombudsman shall report his opinions or recommendations to the party or parties affected thereby and shall attempt to resolve the complaint using, whenever possible, informal techniques of mediation, conciliation, and persuasion. With respect to a complaint against the long-term care facility, the ombudsman shall first notify the administrator of the facility in writing and give such administrator a reasonable opportunity to correct any alleged defect. If the administrator fails to take corrective action after a reasonable amount of time or if the defect seriously threatens the safety or well-being of the residents, the state ombudsman or community ombudsman may refer the complaint to an appropriate agency.

(b) Complaints or conditions adversely affecting residents of long-term care facilities which cannot be resolved in the manner described in subsection (a) of this Code section shall, whenever possible, be referred by the state ombudsman or community ombudsman to an appropriate agency.

(c) The community ombudsman shall not disclose to the public, either directly or indirectly, the identity of any long-term care facility which is the subject of an investigation unless and until the matter has been reviewed by the office of the state ombudsman and the matter has been referred to an appropriate governmental agency for action. (Code 1933, § 88-1907a, enacted by Ga. L. 1979, p. 1240, § 1.)

31-8-57. Reporting abuse.

Any person who has reasonable cause to believe that a resident of a long-term care facility is being, or has been, abused, neglected, exploited, or abandoned or is in a condition which is the result of abuse, neglect, exploitation, or abandonment may report such information or cause a report to be made in any reasonable manner to the state

ombudsman or community ombudsman, if any. (Code 1933, § 88-1909a, enacted by Ga. L. 1979, p. 1240, § 1.)

31-8-58. Confidentiality.

The identity of any complainant, resident on whose behalf a complaint is made, or individual providing information on behalf of the resident or complainant relevant to the investigation of a complaint shall be confidential and may be disclosed only with the express permission of such person. The information produced by an investigation may be disclosed by the state ombudsman or community ombudsman only if the identity of any such person is not disclosed by name or inference. If the identity of any such person is disclosed by name or inference in such information, the information may be disclosed only with his express permission. If the complaint becomes the subject of a judicial proceeding, such investigative information may be disclosed for the purpose of the proceeding. (Code 1933, § 88-1908a, enacted by Ga. L. 1979, p. 1240, § 1.)

JUDICIAL DECISIONS

Disclosure in judicial proceeding. — O.C.G.A. § 31-8-58 merely removes the problem of confidentiality in allowing disclosure of ombudsman's report concerning investigation as to injuries and treatment of an elderly patient of a nursing home in

a judicial proceeding, and does not eliminate application of the regular rules of evidence. *Coastal Health Servs., Inc. v. Rozier*, 176 Ga. App. 240, 335 S.E.2d 712 (1985).

31-8-59. Notice to residents.

The state ombudsman shall prepare and distribute to each long-term care facility in the state a written notice describing the long-term care ombudsman program and the procedure to follow in making a complaint, including the address and telephone number of the state ombudsman and community ombudsman, if any. The administrator shall give the written notice required by this Code section to each resident and his legally appointed guardian, if any, upon admission. The administrator shall also post such written notice in conspicuous public places in the facility in accordance with procedures provided by the state ombudsman and shall give such notice to any resident and his legally appointed guardian, if any, who did not receive it upon admission. The failure to provide the notices required by this Code section shall be a ground upon which the department may revoke any permit issued to a long-term care facility under Code Section 31-7-1. (Code 1933, § 88-1910a, enacted by Ga. L. 1979, p. 1240, § 1.)

Administrative rules and regulations. — Residents' rights, Official Com- pilation of the Rules and Regulations of the State of Georgia, Department of Hu-

man Resources (now Department of Human Services), Public Health, § 290-5-39.

31-8-60. Retaliation against resident and interference with ombudsman prohibited; provisions applicable to violations.

No person shall discriminate or retaliate in any manner against any resident or relative or guardian of a resident, any employee of a long-term care facility, or any other person because of the making of a complaint or providing of information in good faith to the state ombudsman or community ombudsman. No person shall willfully interfere with the state ombudsman or community ombudsman in the performance of his or her official duties. Code Sections 31-2-8 and 31-5-8 shall apply fully to any violation of this article. (Code 1933, § 88-1911a, enacted by Ga. L. 1979, p. 1240, § 1; Ga. L. 1995, p. 1239, § 2; Ga. L. 2009, p. 453, § 1-9/HB 228; Ga. L. 2011, p. 705, § 4-7/HB 214.)

The 2011 amendment, effective July 1, 2011, substituted “Code Sections 31-2-8 and 31-5-8” for “Code Sections 31-2-11 and 31-5-8” in the last sentence of this Code section.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

31-8-61. Liability for provision of information.

Notwithstanding any other provision of law, no person providing information, including, but not limited to, patient records, to the state ombudsman or a community ombudsman shall be held, by reason of having provided such information, to have violated any criminal law or to be civilly liable under any law unless such information is false and the person providing such information knew or had reason to believe that it was false. (Code 1933, § 88-1913a, enacted by Ga. L. 1979, p. 1240, § 1.)

31-8-62. Liability arising from complaints.

Any person who, in good faith, makes a complaint or provides information as authorized in this article shall incur no civil or criminal liability therefor. Any state or community ombudsman who, in good faith, performs his or her official duties, including but not limited to, making a statement or communication relevant to a complaint received or an investigative activity conducted pursuant to this article shall incur no civil or criminal liability therefor. (Code 1933, § 88-1912a, enacted by Ga. L. 1979, p. 1240, § 1; Ga. L. 1995, p. 1239, § 3.)

31-8-63. Rules and regulations.

The department is authorized to adopt and promulgate rules and regulations to implement this article. (Code 1933, § 88-1914a, enacted by Ga. L. 1979, p. 1240, § 1.)

ARTICLE 4**REPORTING ABUSE OR EXPLOITATION OF RESIDENTS IN
LONG-TERM CARE FACILITIES**

Cross references. — Protective services for abused, neglected, or exploited disabled adults, T. 30, C. 5. Further provisions regarding reporting of abuse of

residents of long-term care facility, § 31-8-57 et seq. Public assistance for the elderly generally, § 49-4-30 et seq.

RESEARCH REFERENCES

Am. Jur. 2d. — 57A Am. Jur. 2d, Negligence, § 173.

C.J.S. — 65 C.J.S. 2d, Negligence, §§ 9, 14, 15.

ALR. — Criminal liability under statutes penalizing abuse or neglect of the institutionalized infirm, 60 ALR4th 1153.

31-8-80. Short title.

This article shall be known as the “Long-term Care Facility Resident Abuse Reporting Act.” (Code 1933, § 88-1901c, enacted by Ga. L. 1980, p. 1261, § 1.)

JUDICIAL DECISIONS

Cited in Brogdon v. National Healthcare Corp., 103 F. Supp. 2d 1322 (N.D. Ga. 2000).

31-8-81. Definitions.

As used in this article, the term:

(1) “Abuse” means any intentional or grossly negligent act or series of acts or intentional or grossly negligent omission to act which causes injury to a resident, including, but not limited to, assault or battery, failure to provide treatment or care, or sexual harassment of the resident.

(1.1) “Department” means the Department of Community Health.

(2) “Exploitation” means an unjust or improper use of another person or the person’s property through undue influence, coercion, harassment, duress, deception, false representation, false pretense, or other similar means for one’s own profit or advantage.

(3) “Long-term care facility” or “facility” means any skilled nursing home, intermediate care home, assisted living community, personal care home, or community living arrangement now or hereafter subject to regulation and licensure by the department.

(4) “Resident” means any person receiving treatment or care in a long-term care facility. (Code 1933, § 88-1902c, enacted by Ga. L. 1980, p. 1261, § 1; Ga. L. 2003, p. 558, § 4; Ga. L. 2007, p. 219, § 3/HB 233; Ga. L. 2011, p. 227, § 19/SB 178; Ga. L. 2011, p. 705, § 4-11/HB 214.)

The 2011 amendments. — The first 2011 amendment, effective July 1, 2011, inserted “assisted living community,” in paragraph (3). The second 2011 amendment, effective July 1, 2011, added paragraph (1.1).

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

31-8-82. Reporting abuse or exploitation; records.

(a) Any:

(1) Administrator, manager, physician, nurse, nurse’s aide, orderly, or other employee in a hospital or facility;

(2) Medical examiner, dentist, osteopath, optometrist, chiropractor, podiatrist, social worker, coroner, clergyman, police officer, pharmacist, physical therapist, or psychologist; or

(3) Employee of a public or private agency engaged in professional services to residents or responsible for inspection of long-term care facilities

who has knowledge that any resident or former resident has been abused or exploited while residing in a long-term care facility shall immediately make a report as described in subsection (c) of this Code section by telephone or in person to the department. In the event that an immediate report to the department is not possible, the person shall make the report to the appropriate law enforcement agency. Such person shall also make a written report to the department within 24 hours after making the initial report.

(b) Any other person who has knowledge that a resident or former resident has been abused or exploited while residing in a facility may report or cause a report to be made to the department or the appropriate law enforcement agency.

(c) A report of suspected abuse or exploitation shall include the following:

(1) The name and address of the person making the report unless such person is not required to make a report;

- (2) The name and address of the resident or former resident;
- (3) The name and address of the facility;
- (4) The nature and extent of any injuries or the condition resulting from the suspected abuse or exploitation;
- (5) The suspected cause of the abuse or exploitation; and
- (6) Any other information which the reporter believes might be helpful in determining the cause of the resident's injuries or condition and in determining the identity of the person or persons responsible for the abuse or exploitation.

(d) Upon receipt of a report of abuse or exploitation, the department may notify the appropriate law enforcement agency. In the event a report is made directly to a law enforcement agency, under subsection (a) or (b) of this Code section, that agency shall immediately notify the department.

(e) The department shall maintain accurate records which shall include all reports of abuse or exploitation, the results of all investigations and administrative or judicial proceedings, and a summary of actions taken to assist the resident. (Code 1933, § 88-1903c, enacted by Ga. L. 1980, p. 1261, § 1; Ga. L. 2009, p. 453, § 1-33/HB 228.)

31-8-83. Investigations.

(a) The department shall immediately initiate an investigation after the receipt of any report. The department shall direct and conduct all investigations; however, it may delegate the conduct of investigations to local police authorities or other appropriate agencies. If such delegation occurs, the agency to which authority has been delegated must report the results of its investigation to the department immediately upon completion.

(b) The investigation shall determine the nature, cause, and extent of the reported abuse or exploitation, an assessment of the current condition of the resident, and an assessment of needed action and services. Where appropriate, the investigation shall include a prompt visit to the resident.

(c) The investigating agency shall collect and preserve all evidence relating to the suspected abuse or exploitation.

(d) All state, county, and municipal law enforcement agencies, employees of long-term care facilities, and other appropriate persons shall cooperate with the department or investigating agency in the administration of this article. (Code 1933, § 88-1904c, enacted by Ga. L. 1980, p. 1261, § 1.)

31-8-84. Evaluation of results of investigation; protection of resident.

(a) Upon the receipt of the results of an investigation, the department, in cooperation with the investigating agency, shall immediately evaluate such results to determine what actions shall be taken to assist the resident.

(b) The department or an agency designated by the department shall assist and prevent further harm to a resident who has been abused or exploited. The department may also take appropriate legal actions to assure the safety and welfare of all other residents of the facility where necessary.

(c) Within a reasonable time not to exceed 30 days after it has initiated action to assist a resident, the department shall determine the current condition of the resident, whether the abuse or exploitation has been abated, and whether continued assistance is necessary.

(d) If as a result of an investigation a determination is made that a resident has been abused or exploited, the department shall contact the appropriate prosecuting authority and provide all information and evidence to such prosecuting authority. (Code 1933, §§ 88-1905c, 88-1906c, enacted by Ga. L. 1980, p. 1261, § 1.)

31-8-85. Immunity from liability.

(a) Any agency or person who in good faith makes a report or provides information or evidence pursuant to this article shall be immune from liability for such actions.

(b) Neither the department nor its employees, when acting in good faith and with reasonable diligence, shall have any liability for defamation, invasion of privacy, negligence, or any other claim in connection with the collection or release of information pursuant to this article and neither shall be subject to suit based upon any such claims. (Code 1933, § 88-1907c, enacted by Ga. L. 1980, p. 1261, § 1; Ga. L. 1991, p. 1601, § 1.)

Law reviews. — For note on 1991 amendment of this Code section, see 8 Ga. St. U.L. Rev. 74 (1992).

31-8-86. Confidentiality.

The identities of the resident, the alleged perpetrator, and persons making a report or providing information or evidence shall not be disclosed to the public unless required to be revealed in court proceedings or upon the written consent of the person whose identity is to be

revealed or as otherwise required by law. Upon the resident's or his representative's request, the department shall make information obtained in an abuse report or complaint and an investigation available to an allegedly abused or exploited resident or his representative for inspection or duplication, except that such disclosure shall be made without revealing the identity of any other resident, the person making the report, or persons providing information by name or inference. For the purpose of this Code section, the term "representative" shall include any person authorized in writing by the resident or appointed by an appropriate court to act upon the resident's behalf. The term "representative" also shall include a family member of a deceased or physically or mentally impaired resident unable to grant authorization; provided, however, such family members who do not have written or court authorization shall not be authorized by this Code section to receive the resident's health records as defined in Code Section 31-33-1. (Code 1933, § 88-1908c, enacted by Ga. L. 1980, p. 1261, § 1; Ga. L. 1991, p. 1601, § 2.)

Law reviews. — For note on 1991 amendment of this Code section, see 8 Ga. St. U.L. Rev. 74 (1992).

31-8-87. Retaliation prohibited.

No person or facility shall discriminate or retaliate in any manner against any person for making a report or providing information pursuant to this article or against any resident who is the subject of a report. Nothing in this Code section shall be construed to prohibit the termination of the relationship between the facility and the resident for reasons other than that the facility has been made the subject of a report, that such a report has been made, or that information has been provided pursuant to this article. (Code 1933, § 88-1909c, enacted by Ga. L. 1980, p. 1261, § 1.)

31-8-88. Notice of requirements of article.

The department shall prepare a written notice describing the reporting requirements set forth in this article. Such notice shall be distributed to all long-term care facilities and hospitals in the state and copies thereof shall be posted in conspicuous locations within facilities and hospitals. (Code 1933, § 88-1910c, enacted by Ga. L. 1980, p. 1261, § 1.)

ARTICLE 5

BILL OF RIGHTS FOR RESIDENTS OF LONG-TERM CARE FACILITIES

Cross references. — Rights and privileges of patients undergoing treatment for mental illness, § 37-3-140 et seq. Rights and privileges of persons undergoing habilitation for mental retardation, § 37-4-100 et seq.

RESEARCH REFERENCES

ALR. — Criminal liability under statutes penalizing abuse or neglect of the institutionalized infirm, 60 ALR4th 1153. Validity, construction, application, and effect of Civil Rights of Institutionalized Persons Act, 42 USCS §§ 1997 — 1997j, 93 ALR Fed. 706.

Liability of nursing home for violating statutory duty to notify third party concerning patient's medical condition, 46 ALR5th 821.

31-8-100. Short title.

This article shall be known and may be cited as the “Bill of Rights for Residents of Long-term Care Facilities.” (Code 1933, § 88-1901B, enacted by Ga. L. 1981, p. 149, § 1.)

JUDICIAL DECISIONS

Choice of psychologist. — Bill of Rights for Residents of Long-term Care Facilities, O.C.G.A. § 31-8-100 et seq., does not give nursing home residents the right to choose a psychologist — it only gives the residents the right to choose a physician and a pharmacist. *Pruitt Corp. v. Strahley*, 270 Ga. 430, 510 S.E.2d 821 (1999).

Federal question jurisdiction. — In a wrongful death action alleging violations of Georgia’s Bill of Rights for Residents of Long-term Care Facilities, O.C.G.A. § 31-8-100 et seq., and 42 C.F.R. § 482.25, remand was properly granted as there was no federal question jurisdiction; whether a failure to comply with the requirements of § 482.25 constituted negligence per se under Georgia law was a matter of state law. *Burney v. 4373 Houston, LLC*, No. 5:05-cv-255 (CAR), 2005 U.S. Dist. LEXIS 34686 (M.D. Ga. Oct. 24, 2005).

RESEARCH REFERENCES

ALR. — Construction and application of state patient bill of rights statutes, 87 ALR5th 277.

31-8-101. Legislative intent.

The General Assembly finds that persons residing within long-term care facilities are isolated from the community and often lack the means to assert fully their rights as individual citizens. The General Assembly further recognizes the need for these persons to live within

the least restrictive environment possible in order to retain their individuality and personal freedom. It is therefore the intent of the General Assembly to preserve the dignity and personal integrity of residents of long-term care facilities through the recognition and declaration of rights safeguarding against encroachments upon each resident's need for self-determination. It is the further intent of the General Assembly that this article complement and not duplicate or substitute for other survey and inspection programs regarding long-term care facilities. (Code 1933, § 88-1903B, enacted by Ga. L. 1981, p. 149, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Health, §§ 1 et seq., 57, 75, 82.

C.J.S. — 39A C.J.S., Health and Environment, §§ 1, 4 et seq., 78, 79, 81, 82.

31-8-102. Definitions.

As used in this article, the term:

(1) "Administrator" means a person, duly licensed as a nursing home administrator under Chapter 27 of Title 43, who operates or manages or is in charge of a long-term care facility.

(1.1) "Department" means the Department of Community Health.

(2) "Guardian" means a resident's legal guardian or conservator, or the parent of a minor representative who does not have a duly appointed guardian.

(3) "Long-term care facility" or "facility" means any intermediate care home, skilled nursing home, or intermingled home subject to regulation and licensure by the department.

(4) "Representative" means a person authorized by a resident or his guardian to act for the resident as an official delegate or agent.

(5) "Resident" means any person who is receiving treatment or care in any long-term care facility. Such resident shall be entitled to exercise all rights provided under this article except as limited by a court of competent jurisdiction or by applicable law. (Code 1933, § 88-1902B, enacted by Ga. L. 1981, p. 149, § 1; Ga. L. 2011, p. 705, § 4-12/HB 214.)

The 2011 amendment, effective July 1, 2011, added paragraph (1.1).

2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

Law reviews. — For article on the

31-8-103. Rights of residents generally.

Residents' rights shall include, but not be limited to, the rights provided in Code Sections 31-8-104 through 31-8-121. (Code 1933, § 88-1905B, enacted by Ga. L. 1981, p. 149, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 15 Am. Jur. 2d, Civil Rights, § 12 et seq. 41 C.J.S., Hospitals, §§ 13, 15.

C.J.S. — 14A C.J.S., Civil Rights, § 722 et seq.

31-8-104. Explanation of rights; acknowledgment of explanation; posting of rights at facilities.

Each resident and his guardian or representative, if the resident does not have a guardian, shall be given by the facility a written and oral explanation of the rights, grievance procedures, and enforcement provisions provided for by this article before or at the time of admission to a long-term care facility. Written acknowledgment of the receipt of such explanation by the resident and his guardian or representative shall be made a part of the resident's file. In addition, each facility shall post written notices of such rights in conspicuous locations in the facility. Such written notices shall be prepared by the department. The notices shall be prepared in type and format which is easily readable by residents and shall describe residents' rights, grievance procedures, and enforcement provisions provided for by this article. (Code 1933, § 88-1906B, enacted by Ga. L. 1981, p. 149, § 1.)

31-8-105. Giving certain notices to persons who became residents before July 1, 1981.

Any person who became a resident before July 1, 1981, shall receive the notices required under Code Section 31-8-104; paragraphs (2), (3), and (4) of subsection (a) of Code Section 31-8-106; subsection (a) of Code Section 31-8-110; and paragraph (4) of subsection (b) of Code Section 31-8-115 no later than September 30, 1981. (Code 1933, § 88-1919B, enacted by Ga. L. 1981, p. 149, § 1.)

31-8-106. Information to be provided residents upon admission; list of current rates and services; bill for charges; access to nonmedical records.

(a) At the time of admission, the facility must provide the resident with:

- (1) A written notice of the facility's basic daily or monthly rates;

(2) A written statement of all facility services, including those offered on a needed basis, and related charges, including any extra charges for services not covered under medicare or Medicaid or by the facility's basic daily or monthly rate;

(3) A statement disclosing the facility's name and business address and the name and business address of the administrator of the facility. Upon request an applicant or resident shall be furnished with a copy of the annual disclosure statement filed with the Department of Community Health; and

(4) Notice of the right of access to the written policies and procedures of the facilities. Access to these policies and procedures shall be permitted during ordinary business hours.

(b) Upon a resident's request, the facility must provide that resident with a current list of all services and charges. Current charges must be posted in a conspicuous location.

(c) The facility must inform each resident in writing, at least 30 days in advance of the effective date, of any changes in rates or the services that these rates cover.

(d) A facility must bill for charges at least once a month unless otherwise agreed. Each bill must itemize charges for:

(1) The daily or monthly rate; and

(2) All extra charges.

(e) Each resident or guardian shall be permitted to inspect and receive a copy of the resident's nonmedical records kept by the facility. The facility may charge a reasonable fee for duplication, which fee shall not exceed actual cost. (Code 1933, § 88-1913B, enacted by Ga. L. 1981, p. 149, § 1; Ga. L. 1985, p. 149, § 31; Ga. L. 1999, p. 296, § 24.)

31-8-107. Refusal of admission or continued residence on the basis of history or condition of mental or physical disease or disability.

Each resident or person requesting admission to a facility shall be free from discrimination by the facility through its refusing admission or continued residency on the basis of the resident's or applicant's history or condition of mental or physical disease or disability, unless such admission would cause the facility or any resident to lose eligibility for any state or federal program of financial assistance or unless the facility cannot provide adequate and appropriate care, treatment, and services to the resident due to such disease or disability. (Code 1933, § 88-1910B, enacted by Ga. L. 1981, p. 149, § 1.)

31-8-108. Required care, treatment, and services; rights in regard thereto; experimental research or treatment.

(a) Each resident shall receive care, treatment, and services which are adequate and appropriate. Care, treatment, and services shall be provided as follows:

(1) With reasonable care and skill;

(2) In compliance with applicable laws and regulations;

(3) Without discrimination in the quality of a service based on the source of payment for the service;

(4) With respect for the resident's personal dignity and privacy; and

(5) With the goal of the resident's return home or to another environment less restrictive than the facility.

(b) In the provision of care, treatment, and services to the resident by the facility, each resident or guardian shall be entitled to the following:

(1) To choose the resident's physician. The physician so chosen shall inform the resident in advance whether or not the physician's fees can be paid from public or private benefits to which the resident is entitled and shall provide such documentation as may be required by law or regulation;

(2) To participate in the overall planning of the resident's care and treatment. The resident or guardian shall be informed of this right each time a substantial change in the treatment plan is made;

(3) To refuse medical treatment, dietary restrictions, and medications for the resident. The resident or guardian shall be informed of the probable consequences of such refusal, the refusal shall be noted in the resident's medical records, and the resident's attending physician shall be notified as soon as practical. If such refusal apparently would be seriously harmful to the health or safety of the resident, the facility shall either refer the resident to a hospital or notify a responsible family member or, if such a family member is not readily available, the county department of family and children services. If such refusal would be harmful to the health or safety of others, as documented in the resident's medical records by the resident's physician, this subsection shall not apply. Any facility or employee of such facility which complies with this paragraph shall not be liable for any damages resulting from such refusal;

(4) To receive from the facility upon the request of the resident, guardian, or representative the name, address, and telephone number of the resident's physician;

(5) To have any significant change in the resident's health status reported to persons of his choice by the facility within a reasonable time; and

(6) To obtain from the resident's physician or the physician attached to the facility a complete and current explanation concerning the resident's medical diagnosis, treatment, and prognosis in language the resident can understand. Each resident shall have access to all information in the medical records of the resident and shall be permitted to inspect and receive a copy of such records unless medically contraindicated. The facility may charge a reasonable fee for duplication, which fee shall not exceed actual cost.

(c) Each resident shall be free from experimental research or treatment unless the informed, written consent of the resident or guardian is first obtained. (Code 1933, § 88-1914B, enacted by Ga. L. 1981, p. 149, § 1.)

Cross references. — Consent for surgical or medical treatment generally, T. 31, C. 9.

JUDICIAL DECISIONS

Duty to protect residents from harm caused by other residents. — Not only does a nursing home owe the contractual and statutory duty of care and protection to the nursing home's residents to prevent harm to the residents, the nursing home owes the duty of supervision over any known resident whose propensity to cause harm to others is known or should have been known to the management. *Associated Health Sys. v. Jones*, 185 Ga. App. 798, 366 S.E.2d 147 (1988).

Mere fact that a doctor, psychologist, or psychiatrist has not volunteered to authorize the forms of restraints of O.C.G.A. § 31-8-109 does not discharge the duty of a nursing home to exercise reasonable care and skill for the care and protection of the nursing home's residents from a physically aggressive resident. *Associated Health Sys. v. Jones*, 185 Ga. App. 798, 366 S.E.2d 147 (1988).

Limitations on duty. — Although a nursing home had an obligation to provide adequate and appropriate care to the residents under O.C.G.A. § 31-8-108, this obligation did not necessarily entitle the nursing home to interfere with the autonomous contractual relationships of the

nursing home's residents. *Atlanta Mkt. Ctr. Mgt. Co. v. McLane*, 269 Ga. 604, 503 S.E.2d 278 (1998).

Choice of psychologist. — The Bill of Rights for Residents of Long-term Care Facilities, O.C.G.A. § 31-8-100 et seq., does not give nursing home residents the right to choose a psychologist — it only gives the residents the right to choose a physician and a pharmacist. *Pruitt Corp. v. Strahley*, 270 Ga. 430, 510 S.E.2d 821 (1999).

Expert affidavit not required for sufficient pleading. — Trial court erred in dismissing a wrongful death claim by children of a deceased nursing home resident based on their allegation that the nursing home violated O.C.G.A. § 31-8-108(a)(2) of the Bill of Rights for Residents of Long-Term Care Facilities by not documenting the resident's complaints of chest pain as the claim was based on the nonprofessional, administrative aspects of running the facility and, accordingly, it was not subject to the pleading requirement of an expert affidavit pursuant to O.C.G.A. § 9-11-9.1. *Williams v. Alvista Healthcare Ctr., Inc.*, 283 Ga. App. 613, 642 S.E.2d 232 (2007).

Cited in Carr v. Kindred Healthcare Operating, Inc., 293 Ga. App. 80, 666 S.E.2d 401 (2008).

RESEARCH REFERENCES

ALR. — Judicial power to order discontinuance of life-sustaining treatment, 48 ALR4th 67.

31-8-109. Use or threat of physical restraints, isolation, or restrictions on mobility.

(a) Each resident shall be free from actual or threatened physical restraints, isolation, or restrictions on mobility within or outside the facility grounds, including the use of drugs to limit mobility, except to the minimum extent necessary to protect the resident from immediate injury to the resident or to others. In no event shall restraints, restrictions, or isolation be used for punishment, incentive, behavior conditioning or modification, or for the convenience of the facility.

(b) Restraints, restrictions, or isolation shall be used only subject to the following conditions:

(1) Prior to authorizing restraints, restrictions, or isolation, the attending physician shall make a personal examination and individualized determination of the need to use such restraints, restriction, or isolation on that resident and shall specify a reasonable time for such use. No restraint, restriction, or isolation shall be used by the facility longer than 65 days for intermediate care residents and longer than 35 days for skilled nursing residents, except by reorders of the attending physician after personal examination of the resident. Irrespective of such time period specified, restraints, restrictions, or isolation shall not be used beyond the period of actual need;

(2) In an emergency situation, restraints, restrictions, or isolation shall be authorized by the person in charge only to protect the resident from immediate injury to the resident or others and shall not be continued for more than 12 hours after the onset of the emergency without personal examination and authorization by the attending physician;

(3) The resident and a person designated by the resident, if any, shall be informed immediately of the need for the use of restraint, restriction, or isolation, the reasons for such use, and the time the physician has specified for such use. Such information shall be recorded in the resident's file;

(4) A restrained or isolated resident shall be monitored by the staff at least every hour and released and exercised at least every two hours, except during normal sleeping hours; and

(5) When a restraint, restriction, or isolation is used under this Code section, the resident shall retain all rights enumerated in this article. (Code 1933, § 88-1916B, enacted by Ga. L. 1981, p. 149, § 1.)

JUDICIAL DECISIONS

Restriction to a designated area is a restraint on mobility of the resident and in effect isolates the resident. This is prohibited. A restriction from an area where friction between the residents tends to develop, i.e., the TV room, exercise room, or even the dining room, may be used by management as necessary as an aid in behavioral control, since it does not isolate or restrain the mobility of the resident from other areas of the grounds and is not a form of physical restraint. *Associated Health Sys. v. Jones*, 185 Ga. App. 798, 366 S.E.2d 147 (1988).

Duty to exercise reasonable care and skill. — Mere fact that a doctor, psychologist, or psychiatrist has not volunteered to authorize the forms of restraints of O.C.G.A. § 31-8-109 does not discharge the duty of a nursing home to exercise reasonable care and skill for the care and protection of the nursing home's residents from a physically aggressive resident. *Associated Health Sys. v. Jones*, 185 Ga. App. 798, 366 S.E.2d 147 (1988).

31-8-110. Right to select pharmacy or pharmacist; charges for pharmaceutical supplies and services; information as to purpose and effects of drugs.

(a) Each resident or guardian shall be permitted to select the pharmacy or pharmacist of his choice for those pharmaceutical supplies and services not provided by the facility as a part of the basic rate. However, if the facility under its policies or procedures utilizes a specific type of unit dose system, such pharmacy or pharmacist must provide pharmaceuticals under such system. The resident or guardian shall be informed in writing at the time of admission of the resident as to which pharmaceutical supplies and services are not so provided.

(b) No person shall be discriminated against as to admission or continued residency on the basis of the person's choice of pharmacy, pharmacist, or both.

(c) Subject to the resident's choice of pharmacy or pharmacist, each resident shall receive pharmaceutical supplies and services at reasonable prices not exceeding applicable and normally accepted prices for comparably packaged pharmaceutical supplies and services within the community.

(d) Each resident or guardian shall, on his request, be informed of the identity, purpose, and possible reactions to each drug to be administered. (Code 1933, § 88-1915B, enacted by Ga. L. 1981, p. 149, § 1.)

Cross references. — Pharmacists and pharmacies generally, T. 26, C. 4.

31-8-111. Rights as citizen.

Each resident shall be encouraged and assisted by the facility to exercise all rights, benefits, and privileges as a citizen including, but not limited to, the following:

- (1) The right to vote. Residents who are eligible to vote shall have the right to vote in primary, special, and general elections and in referendums. The facility shall permit and reasonably assist residents to obtain voter registration forms, applications for absentee ballots, and absentee ballots and to comply with other requirements which are prerequisites for voting;
- (2) The right to free exercise of religion as well as freedom from imposition of religious beliefs or practices;
- (3) The right to associate, meet, and communicate privately with persons of the resident's choice; and
- (4) The right to participate, inside and outside the facility, in social, family, religious, and community group activities. (Code 1933, § 88-1907B, enacted by Ga. L. 1981, p. 149, § 1; Ga. L. 2012, p. 775, § 31/HB 942.)

The 2012 amendment, effective May 1, 2012, part of an Act to revise, modernize, and correct the Code, substituted “referendums” for “referenda” at the end of the second sentence of paragraph (1).

Cross references. — Registration of voters, § 21-2-210 et seq.

RESEARCH REFERENCES

Am. Jur. Proof of Facts. — Interference with Right to Free Exercise of Religion, 63 POF3d 195.
C.J.S. — 29 C.J.S., Elections, § 203.
ALR. — Power of court or other public

agency to order medical treatment over parental religious objections for child whose life is not immediately endangered, 21 ALR5th 248.

31-8-112. Freedom from duty to perform services for facility; right to rise and retire at times of resident's choice; tobacco and alcoholic beverages; freedom to enter and leave facility.

- (a) Each resident shall be free from a duty to perform services for the facility.
- (b) Each resident shall be permitted to rise and retire at times of his choice, if the resident does not interfere with the rights of others.
- (c) Unless contradictory to written admission policies of which the resident, guardian, or representative is informed prior to admission,

each resident shall be permitted to use tobacco and to consume alcoholic beverages, subject to the facility's policies and safety rules and applicable state law, if the resident does not interfere with the rights of others.

(d) Each resident shall be free to enter and leave the facility as the resident chooses. (Code 1933, § 88-1908B, enacted by Ga. L. 1981, p. 149, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 40A Am. Jur. 2d, Hospitals and Asylums, § 15.

31-8-113. Right to retain and use personal property at facility; provision of secure storage space for such property; records of stored property; investigation of complaints of theft.

(a) Each resident shall be permitted to retain and use his personal property, including funds and clothing, in his immediate living quarters as space permits.

(b) Upon request, the facility shall provide a means of securing the resident's property in his room or in any other secured part of the facility so long as the resident has access to such property on weekdays and, where facility policy allows, on weekends and holidays. Each facility shall keep a record of all personal property deposited within a secured part of the facility.

(c) The facility shall develop procedures for investigating complaints concerning thefts of residents' property and shall promptly investigate all such complaints and report the results of its investigation to the complainant. (Code 1933, § 88-1909B, enacted by Ga. L. 1981, p. 149, § 1.)

31-8-114. Right to privacy.

Each resident shall enjoy the right of privacy including, but not limited to, the following:

(1) The right to privacy in the resident's room or the resident's portion of the room. The staff may not enter a resident's room without making their presence known, except when the resident is asleep, in an emergency threatening the health or safety of the resident, or as required by the resident's care plan;

(2) The right to a private room and a personal sitter if the resident pays the difference between the facility's charge for such a room and sitter and the amount reimbursed through medicare or Medicaid;

(3) The right to private visits with the resident's spouse. Spouses shall be permitted to share a room when available where both are residents of the facility;

(4) The right to have unimpeded, private, and uncensored communication with anyone of the resident's choice by mail, public telephone, and visitation, provided that such visitation does not disturb other residents. The administrator shall provide that mail is received and mailed on regular postal delivery days, that telephones are accessible for confidential and private communications, and that at least one private place per facility is available for visits during normal visitation hours, which shall be for at least 12 continuous hours per day;

(5) The right to refuse acceptance of correspondence, telephone calls, or visitation by anyone;

(6) The right to respect and privacy in his medical, personal, and bodily care program. Each resident's case discussion, consultation, examination, treatment, and care shall be confidential and shall be conducted in privacy. Those persons not directly involved in the resident's care must have the resident's permission to be present; and

(7) The right to receive confidential treatment of the resident's personal and medical records. Only the resident or guardian may approve the release or disclosure of such records to any individual outside the facility, except in case of (A) the resident's transfer to another health care facility, (B) during a medicare, Medicaid, licensure, medical care foundation, or peer review survey, or (C) as otherwise provided by law or third-party payment contract. (Code 1933, § 88-1911B, enacted by Ga. L. 1981, p. 149, § 1; Ga. L. 1985, p. 149, § 31.)

RESEARCH REFERENCES

Am. Jur. 2d. — 40A Am. Jur. 2d, Hospitals and Asylums, § 14 et seq.

31-8-115. Use of payments made to or on behalf of a resident; right of resident or his guardian to manage the resident's financial affairs; assistance by facility in such management.

(a) Any payments made to or on behalf of a resident, regardless of the payee, shall be used exclusively for the resident's benefit, unless otherwise required by law.

(b) Each resident or his guardian shall be permitted to manage the financial affairs of the resident and to withdraw and use funds from any

personal account established for him at the facility. The resident or his guardian may authorize the administrator or other person employed by the facility to assist in the management of such resident's financial affairs, either wholly or partially, subject to the following conditions:

(1) Such authorization must be in writing and maintained in the resident's files;

(2) Resident's funds shall be expended by the facility only with prior written consent or upon the immediate request of the resident or guardian;

(3) The resident, his guardian, or representative shall be given any portion or all of the resident's funds upon the request of the resident or guardian;

(4) A current written record of all financial arrangements and transactions involving the resident's funds shall be maintained and made available to the resident or guardian for inspection and copying upon request. A written statement showing the current balance and an itemized listing of all transactions shall be provided to each resident or guardian at least quarterly and prior to any change in ownership of the facility;

(5) Funds received from a resident or on his behalf may be deposited in an interest-bearing account, but in any event all funds not needed for ordinary use by residents on a daily basis shall be deposited in an account insured by agencies of or corporations chartered by the state or federal government and in a form which clearly indicates that the facility has only a fiduciary interest in the funds. Any interest earned on such account shall accrue to the resident; and

(6) Each facility shall obtain an irrevocable letter of credit from a bank or savings and loan association, as defined in Code Section 7-1-4, or purchase a surety bond at least in the amount of the funds to guarantee the security of residents' funds. (Code 1933, § 88-1912B, enacted by Ga. L. 1981, p. 149, § 1; Ga. L. 1991, p. 1129, § 1.)

Law reviews. — For note on 1991 amendment of this Code section, see 8 Ga. St. U.L. Rev. 74 (1992).

31-8-116. Involuntary transfer of residents discharged from facility; return to facility after transfer.

(a) Except in an emergency, where the resident or other residents are subject to an imminent and substantial danger that only immediate transfer or discharge will relieve or reduce, a facility may involuntarily

transfer a resident only in the following situations and after other reasonable alternatives to transfer have been exhausted:

- (1) A physician determines that failure to transfer the resident will threaten the health or safety of the resident or others and documents that determination in the resident's medical record. If the physician determines that the facility cannot provide care, treatment, and services which are adequate and appropriate, it shall be conclusively presumed that the failure to transfer will threaten the health or safety of the resident. If the basis for the transfer or discharge is the safety of the resident himself, the resident shall not be involuntarily transferred or discharged unless a physician determines that such transfer or discharge is not reasonably expected to endanger the resident to a greater extent than remaining in the facility and documents that determination in the resident's medical records;
 - (2) The facility does not participate in or voluntarily or involuntarily ceases to operate or participate in the program which reimburses the cost of the resident's care;
 - (3) Nonpayment of allowable fees has occurred. The conversion of a resident from private pay status to Medicaid eligibility due to exhaustion of personal financial resources or from medicare to Medicaid does not constitute nonpayment of fees under this paragraph; or
 - (4) When the findings of a medicare or Medicaid medical necessity review determine that the resident no longer requires the level of care provided at the facility.
- (b) If the facility voluntarily or involuntarily ceases to operate or participate in the program which reimburses the costs of the resident's care, the facility must cooperate fully with the state Medicaid agency and the Centers for Medicare and Medicaid Services regional office in the implementation of any transfer planning and transfer counseling conducted by these agencies.
- (c) The facility shall assist the resident and guardian in finding a reasonably appropriate alternative placement prior to the proposed transfer or discharge. The plan for such transfer or discharge shall be designed to mitigate the effects of transfer stress to the resident. Such plan shall include counseling the resident, guardian, or representative regarding available community resources and informing the appropriate state or social service organization.
- (d) The facility must notify the resident, guardian or representative, and attending physician at least 30 days before any involuntary transfer, except a transfer pursuant to paragraph (4) of subsection (a) of this Code section. This notice must be in writing and must contain:

(1) The reasons for the proposed transfer;

(2) The effective date of the proposed transfer;

(3) Notice of the right to a hearing pursuant to Code Section 31-8-125 and of the right to representation by legal counsel; and

(4) The location to which the facility proposes to transfer the resident.

(e) The resident shall receive at least 15 days' notice prior to an involuntary intrafacility transfer.

(f) If two residents in a facility are married and the facility proposes to transfer involuntarily one spouse to another facility at a similar level of care, the facility must give the other spouse notice of his or her right to be transferred to the same facility. If the spouse notifies a facility in writing that he wishes to be transferred, the facility must transfer both spouses on the same day, pending availability of accommodations.

(g) Each resident shall be discharged from a facility after the resident or guardian gives the administrator or person in charge of the facility notice of the resident's desire to be discharged and the date of the expected departure. Where the resident appears to be incapable of living independently of the facility, the facility shall notify the Department of Human Services in order to obtain social or protective assistance for the resident immediately. The notice of the discharge by the resident or guardian, the expected and actual date thereof, and notice to the department, where required, shall be documented in the resident's records. Upon such discharge and, if required, notice to the department, the facility is relieved from any further responsibility for the resident's care, safety, or well-being.

(h) Whenever allowed by the resident's health condition, a resident shall be provided treatment and care, rehabilitative services, and assistance by the facility to prepare the resident to return to the resident's home or other living situation less restrictive than the facility. Upon the request of the resident, guardian, or representative, the facility shall provide him with information regarding available resources and inform him of the appropriate state or social service organizations.

(i) Each resident transferred from a facility to a hospital, other health care facility, or trial alternative living placement shall have the right to return to the facility immediately upon discharge from the hospital or other health care facility or upon termination of the trial living placement, provided that the resident has continued to pay the facility or third-party payment is provided for the period of the resident's absence. In cases of nonpayment to the facility during such absence, a resident who requests to return to a facility from a hospital

shall be admitted by the facility to the first bed available after discharge from the hospital. (Code 1933, § 88-1917B, enacted by Ga. L. 1981, p. 149, § 1; Ga. L. 1985, p. 149, § 31; Ga. L. 2002, p. 415, § 31; Ga. L. 2005, p. 509, § 8/HB 394; Ga. L. 2009, p. 453, § 2-2/HB 228.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2002, an extra “the” was deleted preceding “Centers for Medicare and Medicaid Services” in subsection (b).

RESEARCH REFERENCES

Am. Jur. 2d. — 40A Am. Jur. 2d, Hospitals and Asylums, § 14.

31-8-117. Suspension of certain rights where exercise poses danger to self or other residents; notice of suspension; duration.

Only the rights enumerated in paragraph (6) of subsection (b) of Code Section 31-8-108 and subsections (b), (c), and (d) of Code Section 31-8-112 may be suspended as a result of medical contraindication, as determined by the resident’s physician, and then only under the following conditions:

(1) The physician has personally examined the resident and the physician documents that the exercise of such right or rights pose a danger to other residents or an immediate and substantial danger to the resident himself. If the threatened danger is only to the resident, the resident’s rights shall not be suspended pursuant to this Code section, provided the resident or guardian understands the danger and insists on the exercise of the right;

(2) Prior to or at the time of a suspension of a right or rights due to a medical contraindication, the resident and his guardian or representative shall be notified of such suspension, its duration, and the resident’s legal right to meet with legal counsel, the ombudsman provided for in Article 3 of this chapter, members of his family, his guardian, or others of his choice; and

(3) Suspension of a right or rights shall be for a reasonable time period, which period shall not exceed 35 days for skilled nursing residents and not to exceed 65 days for intermediate care residents. Every additional period, which periods shall also not exceed the same maximum time periods, shall be considered a new suspension, subject to the conditions of paragraphs (1) and (2) of this Code section. (Code 1933, § 88-1918B, enacted by Ga. L. 1981, p. 149, § 1.)

31-8-118. Freedom from interference in exercise of rights and pursuit of interests; accommodation of conflicting rights; voicing of complaints and recommendation of changes.

(a) The facility must permit each resident to exercise the rights and pursue the interests described in this chapter without restraint, interference, coercion, discrimination, or reprisal from the facility.

(b) The facility must exercise judgment in situations which pose a threat to the health or safety of a resident, and when necessary, must achieve a reasonable accommodation of conflicting rights of residents.

(c) Each resident shall be permitted to voice complaints and recommend changes in policies, procedures, and services to the administrator, his designee, or the residents' council. (Code 1933, § 88-1919B, enacted by Ga. L. 1981, p. 149, § 1.)

31-8-119. Obtaining contributions by coercion; use of contributions designated for a restricted purpose; receipts and records of contributions.

No resident nor any resident's family, guardian, or representative shall be coerced by any means into giving contributions. When contributions are freely made by the resident or resident's family, guardian, or representative for a restricted purpose, such contribution must be used for the purpose so designated. A receipt shall be provided for all contributions and a central record of such receipts shall be maintained at the facility. (Code 1933, § 88-1919B, enacted by Ga. L. 1981, p. 149, § 1; Ga. L. 1982, p. 3, § 31.)

31-8-120. Visitors; right of access.

(a) Visitors must be granted access to residents, who have the right to refuse or terminate any visit. The facility must permit the resident's representatives and representatives of any federally mandated ombudsman or advocacy program to have access to the resident. Access under this Code section shall be allowed during normal visitation hours.

(b) Each person entering a facility shall promptly disclose his presence and identity to the person in charge and shall enter the immediate living quarters of a resident only after identifying himself and receiving permission to enter. Such person shall leave immediately upon the resident's request. The rights of other residents in the room and in the facility shall be respected.

(c) The administrator or person in charge of a facility may refuse access as described in this Code section or require a person to leave a

facility only if he has reason to believe that the presence of the person seeking access would result in severe harm to any resident's health, safety, or property; if the access is sought for financial solicitation or for commercial purposes; or if such access is refused by the resident.

(d) This Code section shall not limit the power of any public agency, ombudsman under Article 3 of this chapter, or other person permitted or required by law to enter and inspect a facility. (Code 1933, § 88-1920B, enacted by Ga. L. 1981, p. 149, § 1.)

31-8-121. Formation of residents' council; space for meetings; assistance in attending meetings; compelling of attendance or participation.

The facility must permit the formation of a residents' council by interested residents, provide space for meetings, and provide assistance in attending meetings to those residents who require it. The facility may not compel attendance at or participation in residents' council meetings. (Code 1933, § 88-1920B, enacted by Ga. L. 1981, p. 149, § 1.)

31-8-122. Compliance with this article by facilities; establishment by facilities of written policies and procedures; familiarization of facility staff with this article.

(a) Each facility shall establish written policies and procedures in accordance with this article and shall provide for the implementation and continuing compliance with this article. In addition, each facility must comply with all other applicable state laws and regulations.

(b) Each facility shall conduct training for all staff on a quarterly basis to provide that its staff is familiar with this article and understands the obligation to provide care for residents consistent with this article at all times. (Code 1933, § 88-1904B, enacted by Ga. L. 1981, p. 149, § 1.)

RESEARCH REFERENCES

C.J.S. — 39A C.J.S., Health and Environment, § 78 et seq. 41 C.J.S., Hospitals, §§ 26, 35.

31-8-123. Use of state or community ombudsman to resolve residents' complaints.

Every effort shall be made to use the state ombudsman or community ombudsman, as provided for in Article 3 of this chapter, to resolve complaints related to residents' rights. (Code 1933, § 88-1903B, enacted by Ga. L. 1981, p. 149, § 1.)

31-8-124. Grievances.

(a) Any resident, guardian, or representative who believes his rights under this article have been violated by a facility shall be permitted to file a grievance under this Code section.

(b) To initiate the grievance, the resident, guardian, or representative may submit an oral or written complaint to the administrator or his designee. The administrator or his designee shall act to resolve the complaint or shall respond to the complaint within three business days, including in the response a description of the review and appeal rights set forth in this Code section.

(c) If the person filing the complaint is not satisfied by the action taken by the administrator or his designee, the complainant shall submit an oral or written complaint to the state or community ombudsman, pursuant to Article 3 of this chapter.

(d) If the ombudsman does not resolve the grievance to the complainant's satisfaction within ten days, the complainant may submit the grievance to an impartial referee, jointly chosen by the administrator or his designee and the complainant, who will conduct a hearing.

(e) The referee's hearing shall be held at the facility within 14 days after submission of the grievance to him, at a time convenient to the referee, the complainant, and the administrator. The complainant and the administrator may review relevant records and documents, present evidence, call witnesses, cross-examine witnesses, make oral arguments, and be represented by any person of their choice. The referee may ask questions of any person, review relevant records and documents, call witnesses, and receive other evidence as appropriate. The referee shall keep a record of the proceedings, which record may be a sound recording. Within 72 hours after the grievance review, the referee shall render a decision and shall give to the complainant and to the administrator a written statement of the decision and reasons therefor, which statement shall also describe the appeal rights set forth in Code Section 31-8-125. Such decision shall be binding on the parties unless reversed upon appeal.

(f) The facility shall maintain a central file of documents pertaining to grievances, such file to be confidential, except that any resident, guardian, or representative may review any document pertaining to the resident and all documents shall be available to the department for inspection. This subsection shall not apply to any documents protected by the attorney-client privilege.

(g) If a resident or complainant is unable for any reason to understand any writing or communication pertinent to this Code section,

such information shall be communicated to him in a manner that takes into account any communication impairment he may have.

(h) A resident, guardian, or representative who elects not to proceed under this Code section shall not be prohibited from proceeding under Code Section 31-8-125 or 31-8-126. (Code 1933, § 88-1921B, enacted by Ga. L. 1981, p. 149, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 15 Am. Jur. 2d, Civil Rights, § 15 et seq.

C.J.S. — 14A C.J.S., Civil Rights, § 722 et seq.

31-8-125. Administrative hearings.

(a) Any resident, guardian, or representative who believes his rights under Code Section 31-8-107, paragraph (3) of subsection (b) of Code Section 31-8-108, Code Section 31-8-109, paragraphs (3) and (4) of Code Section 31-8-111, subsection (d) of Code Section 31-8-112, Code Section 31-8-116, Code Section 31-8-117, or Code Section 31-8-120 have been violated or any complainant or facility dissatisfied with a decision of a referee shall have the right to request a hearing from the department pursuant to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." The department is authorized to hold such hearings and, in the case of an appeal of a decision of a referee, the department may hold such hearings by review of the record.

(b) The hearing shall be conducted within 45 days of the receipt by the department of the request for a hearing. Except where the state or community ombudsman has already been involved in the matter at issue, the department may refer the complaint to the state or community ombudsman for informal resolution pending the hearing.

(c) Except in the event of an emergency situation in which the resident or other residents are subject to imminent and substantial danger that only immediate transfer will relieve or reduce or except in case of nonpayment, no transfer shall take place until all appeal rights are exhausted.

(d) The department shall hold such hearings at the facility upon the resident's request or as necessary due to the resident's medical condition. Where residents of a facility allege a common complaint, the department may at the residents' request schedule a single hearing.

(e) If the department finds no violations of this article, the resident and facility will be so informed. If a violation has occurred, the department shall order the facility to correct such violation; and, upon failure to correct such violation within a reasonable time, the department may impose appropriate civil penalties as provided for in Code

Section 31-8-126. (Code 1933, § 88-1922B, enacted by Ga. L. 1981, p. 149, § 1; Ga. L. 1985, p. 149, § 31.)

RESEARCH REFERENCES

Am. Jur. 2d. — 15 Am. Jur. 2d, Civil Rights, § 15 et seq.

C.J.S. — 14A C.J.S., Civil Rights, § 733 et seq.

31-8-126. Cause of action against facility for violation of rights under this article; civil penalties; applicability of Code Section 31-5-8.

(a) Any person or persons aggrieved because a long-term care facility has violated or failed to provide any right granted under this article shall have a cause of action against such facility for damages and such other relief as the court having jurisdiction of the action deems proper. No person shall be prohibited from maintaining such an action for failure to exhaust any rights to administrative or other relief granted under this article.

(b) In addition to other penalties or remedies that may be imposed by this article or other law, the department is authorized to impose civil penalties as follows:

(1) If a violation has occurred, the department shall order the facility to correct such violation. Upon failure to correct such violation within a reasonable period of time, the department may order the facility to discontinue admitting residents until such violation is corrected; and

(2) In cases of violations repeated by a facility under the same license within a 12 month period, the department shall be authorized to assess a civil penalty not to exceed \$75.00 per violation for each day in which the violation continues, except that the maximum civil penalty for each violation shall not exceed \$2,500.00. In imposing such civil penalties the department shall consider all relevant factors including, but not limited to:

(A) The amount of assessment necessary to ensure immediate and continued compliance;

(B) The character and degree of impact of the violation of the health, safety, and welfare of any resident in the nursing home;

(C) The conduct of the person or facility against whom the citation is issued in taking all feasible steps or procedures necessary or appropriate to comply or to correct the violations; and

(D) Any prior violations by the facility of statutes, regulations, or orders administered, adopted, or issued by the department.

(c) Any such civil penalty shall be imposed by the department only after notice and hearing as provided in Article 1 of Chapter 5 of this title.

(d) Any person or facility subject to a civil penalty under this Code section is entitled to judicial review in accordance with Article 1 of Chapter 5 of this title.

(e) All civil penalties recovered by the department under this Code section shall be paid into the state treasury.

(f) Nothing in this Code section shall be construed to preempt any other law or to deny to any individual any rights or remedies which are provided by or under any other law.

(g) Code Section 31-5-8 shall apply fully to any willful violation of this chapter. (Code 1933, § 88-1923B, enacted by Ga. L. 1981, p. 149, § 1; Ga. L. 1985, p. 149, § 31.)

JUDICIAL DECISIONS

Cited in *Thurman v. Pruitt Corp.*, 212 Ga. App. 766, 442 S.E.2d 849 (1994); *Brogdon v. National Healthcare Corp.*, 103 F. Supp. 2d 1322 (N.D. Ga. 2000).

RESEARCH REFERENCES

Am. Jur. 2d. — 15 Am. Jur. 2d, Civil Rights, § 15 et seq. **C.J.S.** — 14A C.J.S., Civil Rights, §§ 731, 739 et seq., 749, 776.

31-8-127. Rules and regulations.

The department is authorized to promulgate rules and regulations to implement this article. (Code 1933, § 88-1924B, enacted by Ga. L. 1981, p. 149, § 1.)

ARTICLE 5A

REMEDIES FOR RESIDENTS OF PERSONAL CARE HOMES

RESEARCH REFERENCES

ALR. — Liability of nursing home for violating statutory duty to notify third party concerning patient's medical condition, 46 ALR5th 821.

31-8-130. Short title.

This article shall be known and may be cited as the "Remedies for Residents of Personal Care Homes Act." (Code 1981, § 31-8-130, enacted by Ga. L. 1994, p. 461, § 2.)

31-8-131. Legislative findings and intent.

The General Assembly finds that persons residing within personal care homes are often isolated from the community and often lack the means to assert fully their rights as individual citizens. The General Assembly also recognizes that in order for the rights of residents of personal care homes to be fully protected, residents must be afforded a means of recourse when such rights have been denied. It is therefore the intent of the General Assembly to preserve the dignity and personal integrity of residents of personal care homes by providing access to a legal process to hear and redress the grievances of such residents regarding their individual rights. (Code 1981, § 31-8-131, enacted by Ga. L. 1994, p. 461, § 2.)

31-8-132. Definitions.

As used in this article, the term:

(1) "Administrator" means the manager designated by the governing body of a personal care home as responsible for the day-to-day management, administration, and supervision of the personal care home, who may also serve as on-site manager and responsible staff person except during periods of his or her own absence.

(2) "Community ombudsman" means a person certified as a community ombudsman pursuant to Code Section 31-8-52.

(2.1) "Department" means the Department of Community Health.

(3) "Governing body" means the board of trustees, the partnership, the corporation, the association, or the person or group of persons who maintain and control a personal care home and who are legally responsible for the operation of the home.

(4) "Legal surrogate" means a duly appointed person who is authorized to act, within the scope of the authority granted under the legal surrogate's appointment, on behalf of a resident who is adjudicated or certified incapacitated. No member of the governing body, administration, or staff of a personal care home or any affiliated personal care home or their family members may serve as the legal surrogate for a resident.

(5) "Personal care home" or "home" means a facility as defined in Code Section 31-7-12 and shall include any assisted living community as defined in paragraph (3) of subsection (b) of Code Section 31-7-12.2 that is subject to regulation and licensure by the department.

(6) "Representative" means a person who voluntarily, with the resident's written authorization, may act upon the resident's direc-

tion with regard to matters concerning the health and welfare of the resident, including being able to access personal records contained in the resident's file and receive information and notices pertaining to the resident's overall care and condition. No member of the governing body, administration, or staff of a personal care home or any affiliated personal care home or their family members may serve as the representative for a resident.

(7) "Resident" means a person who resides in a personal care home.

(8) "State ombudsman" means the state ombudsman established under Code Section 31-8-52. (Code 1981, § 31-8-132, enacted by Ga. L. 1994, p. 461, § 2; Ga. L. 2011, p. 227, § 20/SB 178; Ga. L. 2011, p. 705, § 4-13/HB 214.)

The 2011 amendments. — The first 2011 amendment, effective July 1, 2011, added "and shall include any assisted living community as defined in paragraph (3) of subsection (b) of Code Section 31-7-12.2 that is subject to regulation and licensure by the department" at the end of

paragraph (5). The second 2011 amendment, effective July 1, 2011, added paragraph (2.1).

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

31-8-133. Residents' rights.

Residents' rights shall include all rights enumerated in the rules and regulations of the Department of Community Health, including, but not limited to, procedural protections relating to admission, transfer, or discharge of residents. (Code 1981, § 31-8-133, enacted by Ga. L. 1994, p. 461, § 2; Ga. L. 2010, p. 878, § 31/HB 1387.)

The 2010 amendment, effective June 3, 2010, part of an Act to revise, modernize, and correct the Code, substituted "the rules and regulations of the Department

of Community Health" for "the Rules of the former Department of Human Resources Chapter 290-5-35" in this Code section.

31-8-134. Grievance procedure.

(a) Any resident, or the representative or legal surrogate of the resident, if any, who believes his or her rights under this article have been violated by a personal care home or its governing body, administrator, or employee shall be permitted to file a grievance under this Code section.

(b) In order to file the grievance provided for in subsection (a) of this Code section, the resident, or representative or legal surrogate of the resident, if any, may submit an oral or written grievance to the administrator or the administrator's designee. The administrator or designee, within five business days, shall either resolve the grievance to

the grievant's satisfaction or respond in writing to the grievance, including in the response a description of the review and appeal rights set forth in this article.

(c) If the person filing the grievance is not satisfied by the action or failure to act of the administrator or designee, the grievant may submit an oral or written complaint to the state or community ombudsman. (Code 1981, § 31-8-134, enacted by Ga. L. 1994, p. 461, § 2.)

31-8-135. Hearing; transfer of resident.

(a) Any resident, the representative or legal surrogate of the resident, if any, or the state or community ombudsman, who believes the resident's rights have been violated by a personal care home, its governing body, administrator, or employee, shall have the right to request a hearing from the department pursuant to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

(b) No person shall be prohibited from requesting a hearing pursuant to subsection (a) of this Code section for failure to exhaust any rights to other relief granted under this article.

(c)(1) Except as provided in paragraph (2) of this subsection, the hearing provided for in subsection (a) of this Code section shall be conducted within 45 days of the receipt by the department of the request for a hearing. Where the state or community ombudsman has not already been involved in the matter at issue, the department may refer the request for a hearing to the state or community ombudsman for informal resolution pending the hearing. Such referral shall not extend the 45 day period in which the department shall conduct such hearing.

(2) If a resident or a resident's legal surrogate or representative, if any, alleges that an action or failure to act by a personal care home or its governing body, administrator, or employee is in retaliation for the exercise by that resident or his or her representative or legal surrogate, if any, of a right conferred by state or federal law or court order, the hearing provided for in subsection (a) of this Code section shall be conducted within 15 days of the receipt of the department of the request for a hearing. For such hearing, all pending requests for hearing by the resident or his or her legal surrogate or representative, if any, relating to such resident shall be consolidated.

(d) No transfer of a resident shall take place until all appeal rights are exhausted, unless:

(1) An immediate transfer is necessary because the resident develops a physical or mental condition requiring continuous medical or nursing care; or

(2) The resident's continuing behavior or condition directly and substantially threatens the health, safety, and welfare of the resident or any other resident.

(e) The department shall hold any hearing provided for in subsection (a) of this Code section at the personal care home upon the resident's request or as necessary due to the resident's physical condition. Where two or more residents of a personal care home allege a common complaint, the department may at the residents' request schedule a single hearing.

(f) If the department finds no violations of this article, the resident and personal care home will be so informed. If a violation has occurred:

(1) The hearing officer shall so notify the staff within the department responsible for the licensure of personal care homes;

(2) The department shall order the personal care home to correct such violation; and

(3) Upon failure of the personal care home to correct such violation within a reasonable time, the department may impose appropriate civil penalties as provided for in Code Section 31-2-8. (Code 1981, § 31-8-135, enacted by Ga. L. 1994, p. 461, § 2; Ga. L. 2009, p. 453, § 1-9/HB 228; Ga. L. 2011, p. 705, § 4-7/HB 214.)

The 2011 amendment, effective July 1, 2011, substituted "Code Section 31-2-8" for "Code Section 31-2-11" at the end of paragraph (f)(3).

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

31-8-136. Action for damages.

(a) Any resident or the representative or legal surrogate of the resident, if any, may bring an action in a court of competent jurisdiction to recover actual and punitive damages against a personal care home or its governing body, administrator, or employee for any violation of the rights of a resident granted under this article. Upon referral and request by the department, the Attorney General may bring such an action. Where a violation of a resident's rights has been found, the resident shall be awarded the actual damages or \$1,000.00, whichever is greater, and may be awarded punitive damages.

(b) No person shall be prohibited from maintaining an action pursuant to this Code section for failure to exhaust any rights to administrative or other relief granted under this article.

(c) The right of a resident to bring an action pursuant to this Code section is in addition to any and all other rights, remedies, or causes of action the resident may have by statute or at common law.

(d) Any resident or the representative or legal surrogate of the resident, if any, may bring an action to recover damages for any action of a personal care home or its governing body, administrator, or employee that adversely affects the resident's rights, privileges, or living arrangement in retaliation for that resident or his or her representative or legal surrogate, if any, having exercised a right conferred by state or federal law or court order. Upon referral and request by the department, the Attorney General may bring such an action. In any action brought under this Code section alleging retaliation, there shall be a presumption of retaliatory conduct, rebuttable by a showing of clear and convincing evidence, if an owner, licensee, administrator, or employee attempts to discharge, transfer, or relocate a resident involuntarily within six months after that resident or his or her representative or legal surrogate, if any, files an action for relief under this Code section, exercises a right to a hearing under this article, or makes an oral or written grievance against the personal care home or its governing body, administrator, or employee to the personal care home, a state or community ombudsman, or a state government official or employee.

(e) Code Section 31-5-8 shall apply fully to any willful violation of this article. (Code 1981, § 31-8-136, enacted by Ga. L. 1994, p. 461, § 2.)

RESEARCH REFERENCES

Am. Jur. 2d. — 22 Am. Jur. 2d, Damages, § 396 et seq.

31-8-137. Temporary restraining order; injunctions.

A resident, the representative or legal surrogate of the resident, if any, or the Attorney General may bring an action in a court of competent jurisdiction for a temporary restraining order, preliminary injunction, or permanent injunction to enjoin a personal care home from violating the rights of a resident. (Code 1981, § 31-8-137, enacted by Ga. L. 1994, p. 461, § 2.)

31-8-138. Failure to validly license as defense.

The failure of the governing body to obtain or maintain a valid license to operate a personal care home shall not constitute a defense to any action brought pursuant to this article where the facility at issue is subject to licensure as a personal care home. (Code 1981, § 31-8-138, enacted by Ga. L. 1994, p. 461, § 2.)

31-8-139. Mandamus.

A resident, the representative or legal surrogate of the resident, if any, the community ombudsman, the governing body of the personal care home, or any other interested party may bring an action in court for mandamus pursuant to Article 2 of Chapter 6 of Title 9 to order the department to comply with any state or federal law relevant to the operation of a personal care home or the care of its residents. (Code 1981, § 31-8-139, enacted by Ga. L. 1994, p. 461, § 2.)

ARTICLE 6**INDIGENT CARE TRUST FUND**

Administrative rules and regulations. — Hospital care for the indigent, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Human Resources, Public Health, Chapter 290-5-5.

Indigent care trust fund nursing home provider fee, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Medical Assistance, Chapter 350-7.

31-8-150. Constitutional authority for passage of article.

This article is passed pursuant to the authority of Article III, Section IX, Paragraph VI(i) of the Constitution. (Code 1981, § 31-8-150, enacted by Ga. L. 1990, p. 139, § 1; Ga. L. 1992, p. 6, § 31; Ga. L. 1993, p. 1014, § 1.)

31-8-151. Definitions.

As used in this article, the term:

(1) “Department” means the Department of Community Health created by Chapter 2 of this title.

(2) “Medically indigent” means a person who meets the state-wide standards of indigency adopted by the department for the purposes of this article.

(3) “Trust fund” means the Indigent Care Trust Fund created by Code Section 31-8-152. (Code 1981, § 31-8-151, enacted by Ga. L. 1990, p. 139, § 1; Ga. L. 1993, p. 1014, § 1; Ga. L. 1999, p. 296, § 9; Ga. L. 2009, p. 453, § 1-8/HB 228.)

31-8-152. Creation of Indigent Care Trust Fund.

There is created the Indigent Care Trust Fund as a separate fund in the state treasury. The state treasurer shall credit to the trust fund all amounts dedicated, transferred, or contributed to such trust fund and

shall invest the trust fund moneys in the same manner as authorized for investing other moneys in the state treasury. (Code 1981, § 31-8-152, enacted by Ga. L. 1990, p. 139, § 1; Ga. L. 1993, p. 1014, § 1; Ga. L. 1993, p. 1402, § 18; Ga. L. 2010, p. 863, § 3/SB 296.)

The 2010 amendment, effective July 1, 2010, substituted “state treasurer” for “director of the Office of Treasury and Fiscal Services” at the beginning of the second sentence.

31-8-152.1. State sales and use taxation of certain health care services.

(a) There is established within the trust fund a segregated account for revenues raised through the sales and use tax on charges defined in subparagraph (H) of paragraph (31) of Code Section 48-8-2. An amount equal to the amount of state sales and use tax proceeds on such charges which have been collected and remitted to the state revenue commissioner shall be credited by the state revenue commissioner on a monthly basis to the segregated account within the trust fund and shall be invested in the same manner as authorized for investing other moneys in the state treasury.

(b) The department shall make application to the federal Department of Health and Human Services for state plan amendments for the 2012 fiscal year that will improve the delivery of long-term care through the use of enhanced case management services and establishing a new base year for nursing home facility cost reports.

(c) Notwithstanding any other provision of this chapter, the General Assembly is authorized to appropriate as state funds to the department for use in any fiscal year all revenues dedicated and deposited into the segregated account. Such appropriations shall be authorized to be made for the sole purpose of obtaining federal financial participation for medical assistance payments for long-term care services, including nursing home services, that are referred by a SOURCE Case Management Provider, as defined in paragraph (34.1) of Code Section 48-8-2. Any appropriation from the segregated account for any purpose other than such medical assistance payments shall be void.

(d) Revenues appropriated to the department pursuant to this Code section shall be used to match federal funds that are available for the purpose for which such trust funds have been appropriated.

(e) Appropriations from the segregated account to the department shall not lapse to the general fund at the end of the fiscal year.

(f) This Code section shall stand automatically repealed on the date the state treasurer certifies in writing to the commissioner that federal matching funds have ceased to be available or on June 30, 2014, whichever date is earlier.

(g) The department is authorized to adopt rules and regulations to implement this Code section. (Code 1981, § 31-8-152.1, enacted by Ga. L. 2011, p. 674, § 1-1/HB 117.)

Effective date. — This Code section became effective July 1, 2011.

31-8-153. Contributions to trust fund.

After June 30, 1990, any hospital, hospital authority, county, municipality, or other person or entity is authorized to contribute to the trust fund. The contribution of public funds to the trust fund shall be a valid public purpose for which those funds may be expended. Contributions to the trust fund shall be irrevocable and shall not include any limitation upon the use of such contributions except as permitted in this article or by the department. (Code 1981, § 31-8-153, enacted by Ga. L. 1990, p. 139, § 1; Ga. L. 1993, p. 1014, § 1.)

31-8-153.1. Irrevocable transfer of funds to trust fund; provision for indigent patients.

After June 30, 1993, any hospital authority, county, municipality, or other state or local public or governmental entity is authorized to transfer moneys to the trust fund. Transfer of funds under the control of a hospital authority, county, municipality, or other state or local public or governmental entity shall be a valid public purpose for which those funds may be expended. The department is authorized to transfer to the trust fund moneys paid to the state by a health care facility as a monetary penalty for the violation of an agreement to provide a specified amount of clinical health services to indigent patients pursuant to a certificate of need held by such facility. Such transfers shall be irrevocable and shall be used only for the purposes contained in Code Section 31-8-154. (Code 1981, § 31-8-153.1, enacted by Ga. L. 1993, p. 1014, § 1; Ga. L. 2001, p. 1240, § 3.)

31-8-153.2. Revenues raised from specified sources.

The General Assembly may provide for the dedication and deposit of revenues raised from specified sources into the trust fund. (Code 1981, § 31-8-153.2, enacted by Ga. L. 1993, p. 1014, § 1.)

31-8-153.3. No lapse of contributions to the general fund.

Contributions and revenues deposited and transferred to the trust fund shall not lapse to the general fund at the end of the fiscal year. (Code 1981, § 31-8-153.3, enacted by Ga. L. 1993, p. 1014, § 1.)

31-8-154. Authorized expenditure of contributed funds.

All moneys contributed and revenues deposited and transferred to the trust fund pursuant to this article and any interest earned on such moneys shall be appropriated to the department for only the following purposes:

- (1) To expand Medicaid eligibility and services;
- (2) For programs to support rural and other health care providers, primarily hospitals, who serve the medically indigent;
- (3) For primary health care programs for medically indigent citizens and children of this state; or
- (4) Any combination of purposes specified in paragraphs (1) through (3) of this Code section. (Code 1981, § 31-8-154, enacted by Ga. L. 1990, p. 139, § 1; Ga. L. 1993, p. 1014, § 1.)

31-8-155. Promulgation of rules for funding expansions of eligibility and indigent care programs.

(a) The department shall establish by rules the purposes for which contributions and transfers to the trust fund may be made. Such purposes shall be consistent with the purposes contained in Code Section 31-8-154. Those rules shall be promulgated by the Board of Community Health pursuant to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," notwithstanding any exclusion or exemption otherwise provided in that chapter.

(b) Contributions to the trust fund shall be made within such time periods as the department establishes by rule pursuant to subsection (a) of this Code section.

(c) The department may make and execute contracts, agreements, and other instruments for the purpose of facilitating transfers to the trust fund.

(d) The department shall establish the manner of disbursement of any funds appropriated to it pursuant to this article. (Code 1981, § 31-8-155, enacted by Ga. L. 1990, p. 139, § 1; Ga. L. 1991, p. 388, § 1; Ga. L. 1993, p. 1014, § 1; Ga. L. 1999, p. 296, § 24.)

Administrative rules and regulations. — Indigent Care Trust Fund, Official Compilation of the Rules and Regula-

tions of the State of Georgia, Department of Community Health, Medical Assistance, Chapter 111-3-6.

31-8-156. Appropriation of state funds by General Assembly.

(a) The General Assembly is authorized to appropriate as state funds to the department for use in any fiscal year not less than all of the moneys contributed and revenues deposited and transferred to the fund and interest earned thereon. Such appropriation shall be made only for those purposes specified in Code Section 31-8-154, and any other appropriation from the trust fund shall be void.

(b) An appropriation pursuant to subsection (a) of this Code section shall specify each purpose, if any, as specified in paragraphs (1) through (4) of Code Section 31-8-154, for which the trust funds are appropriated thereby.

(c) Funds appropriated to the department pursuant to this Code section shall be used to match federal funds or any other funds from a public source or charitable organization which are available for the purposes for which those trust funds have been appropriated.

(d) Appropriations from the trust fund to the department shall be used to supplement and not replace any other state funds appropriated to the department.

(e) Appropriations from the trust fund to the department, except as provided in Code Sections 31-8-157 and 31-8-158, shall not lapse to the general fund at the end of the fiscal year. (Code 1981, § 31-8-156, enacted by Ga. L. 1990, p. 139, § 1; Ga. L. 1993, p. 1014, § 1; Ga. L. 2001, p. 1240, § 4.)

31-8-157. Refunding contributed funds; penalties not refunded.

All contributions to the trust fund and interest earned thereon which have been appropriated but which:

(1) Were void because of having been appropriated in violation of Code Section 31-8-156;

(2) Remain unexpended and not contractually obligated at the end of the fiscal year for which they were appropriated; or

(3) Are determined by the department to be ineligible for anticipated federal matching funds or other matching funds from a public source or charitable organization

shall be returned to the trust fund and shall not lapse but shall be refunded pro rata to the contributors thereof, except that penalties so transferred to the fund shall not be refunded. The Office of Planning and Budget shall determine the amount required to be refunded and the pro rata distribution thereof within 60 days following the end of each fiscal year or, when the department has made a determination

pursuant to paragraph (3) of this Code section, within 60 days after that determination. The amount so determined shall be refunded by the state treasurer within 60 days following that determination. (Code 1981, § 31-8-157, enacted by Ga. L. 1990, p. 139, § 1; Ga. L. 1993, p. 1014, § 1; Ga. L. 1993, p. 1402, § 18; Ga. L. 2001, p. 1240, § 5; Ga. L. 2010, p. 863, § 3/SB 296.)

The 2010 amendment, effective July 1, 2010, substituted “state treasurer” for “director of the Office of Treasury and Fiscal Services” in the last sentence.

31-8-158. Refunding funds not appropriated or determined void or ineligible.

Moneys transferred to the trust fund and interest earned thereon which have not been appropriated by the end of the fiscal year or which have been appropriated but have been determined to be:

- (1) Void because of having been appropriated in violation of Code Section 31-8-156;
- (2) Ineligible for anticipated federal matching funds;
- (3) Subject to return pursuant to any rule promulgated under Code Section 31-8-155; or
- (4) Void because of violation of the terms of a contract, agreement, or other instrument executed pursuant to subsection (c) of Code Section 31-8-155

shall be returned to the trust fund and refunded pro rata to the entities responsible for transfer. The refund shall be made by the state treasurer no less than 30 days following the end of the fiscal year or such a determination by the department, as applicable. (Code 1981, § 31-8-158, enacted by Ga. L. 1993, p. 1014, § 1; Ga. L. 2010, p. 863, § 3/SB 296.)

The 2010 amendment, effective July 1, 2010, substituted “state treasurer” for “director of the Office of Treasury and Fiscal Services” near the beginning of the last sentence.

Editor’s notes. — Ga. L. 1993, p. 1014, § 1, effective April 13, 1993, renumbered former Code Section 31-8-158 as present Code Section 31-8-159.

31-8-159. Reporting requirements.

(a) The department shall annually report to the General Assembly on its use of trust funds appropriated to the department pursuant to this article.

(b) The department shall also provide an annual report no later than September 30 of each year which shall provide the following information for the immediately preceding fiscal year:

- (1) The amount of ambulance service license fees received by the department pursuant to Code Section 31-11-31.1;
- (2) The amount of federal funds received as matching funds to the corresponding ambulance service license fees received; and
- (3) The total amount of funds disbursed to emergency ambulance services from the Indigent Care Trust Fund.

The report required by this subsection shall be made available to the public free of charge by electronic means and in such other manner as the department deems appropriate. (Code 1981, § 31-8-158, enacted by Ga. L. 1990, p. 139, § 1; Code 1981, § 31-8-159, as redesignated by Ga. L. 1993, p. 1014, § 1; Ga. L. 2008, p. 266, § 1/SB 479.)

31-8-160. Applicability of Article 7 of Chapter 4 of Title 49.

Except where inconsistent with this article, the provisions of Article 7 of Chapter 4 of Title 49, the “Georgia Medical Assistance Act of 1977,” shall apply to the department in carrying out the purposes of this article. (Code 1981, § 31-8-159, enacted by Ga. L. 1990, p. 139, § 1; Code 1981, § 31-8-160, as redesignated by Ga. L. 1993, p. 1014, § 1.)

ARTICLE 6A

NURSING HOME PROVIDER FEE

Editor’s notes. — Ga. L. 2003, p. 435, § 1, not codified by the General Assembly, provides that: “This Act shall be known and may be cited as the ‘Nursing Home Provider Fee Act.’”

Administrative rules and regula-

tions. — Indigent care trust fund nursing home provider fee, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Medical Assistance, Chapter 350-7.

31-8-161. Legislative authority.

This article is passed pursuant to the authority of Article III, Section IX, Paragraph VI(i) of the Constitution. (Code 1981, § 31-8-161, enacted by Ga. L. 2003, p. 435, § 2.)

31-8-162. Definitions.

As used in this article, the term:

- (1) “Department” means the Department of Community Health created by Chapter 2 of this title.
- (2) “Medically indigent” means a person who meets the state-wide standards of indigency adopted by the department.
- (3) “Nursing home” means a freestanding facility or distinct part or unit of a hospital required to be licensed or permitted as a nursing

home under the provisions of Chapter 7 of this title which is not owned or operated by the state or federal government.

(4) "Nursing home that disproportionately serves the medically indigent" means a nursing home for which the patient days attributable to medically indigent residents account for more than 15 percent of the nursing home's total patient days during a 12 month period. For purposes of this computation, medicare program patient days shall not be included in the nursing home's total patient days.

(5) "Patient day" means a day of care provided to an individual resident of a nursing home by the nursing home. A patient day includes the date of admission but does not include the date of discharge, unless the dates of admission and discharge occur on the same day.

(6) "Provider fee" means the fee imposed pursuant to this article for the privilege of operating a nursing home.

(7) "Segregated account" means an account for the dedication and deposit of provider fees which is established within the Indigent Care Trust Fund created pursuant to Code Section 31-8-152.

(8) "State plan" means all documentation submitted by the commissioner of the Department of Community Health on behalf of the department to and for approval by the United States secretary of health and human services, pursuant to Title XIX of the federal Social Security Act.

(9) "Trust fund" means the Indigent Care Trust Fund created pursuant to Code Section 31-8-152.

(10) "Waiver" means a waiver of the uniform tax requirement for permissible health care related taxes, as provided in 42 C.F.R. Section 433.68(e)(2)(i) and (ii). (Code 1981, § 31-8-162, enacted by Ga. L. 2003, p. 435, § 2; Ga. L. 2009, p. 453, § 1-8/HB 228.)

U.S. Code. — Title XIX of the federal Code section, is codified at 42 U.S.C. Social Security Act, referred to in this § 1396 et seq.

31-8-163. Segregated account of revenues raised through provider fees.

There is established within the trust fund a segregated account for revenues raised through the imposition of the provider fee. All revenues raised through provider fees shall be credited to the segregated account within the trust fund and shall be invested in the same manner as authorized for investing other moneys in the state treasury. Contributions and transfers to the trust fund pursuant to Code Sections

31-8-153 and 31-8-153.1 shall not be deposited into the segregated account. (Code 1981, § 31-8-163, enacted by Ga. L. 2003, p. 435, § 2.)

31-8-164. Provider fee based on patient day; quarterly payment required.

(a) Each nursing home shall be assessed a provider fee with respect to each patient day for the preceding quarter, excluding medicare program patient days. The provider fee shall be assessed uniformly upon all nursing homes, except as provided in Code Section 31-8-168. The aggregate provider fees imposed under this article shall not exceed the maximum amount that may be assessed pursuant to the percentage limitation of the first prong of the test for an indirect guarantee set out in 42 C.F.R. Section 433.68(f)(3)(i).

(b) The provider fee shall be paid quarterly by each nursing home to the department. A nursing home shall calculate and report the provider fee due upon a form prepared by the department and submit therewith payment of the provider fee no later than the thirtieth day following the end of each calendar quarter. The initial provider fee report shall be filed and the initial payment of the provider fee shall be submitted no later than July 30, 2003. A nursing home shall calculate and report the initial provider fee using information about its patient days for the quarter ending June 30, 2003. (Code 1981, § 31-8-164, enacted by Ga. L. 2003, p. 435, § 2; Ga. L. 2006, p. 204, § 1/HB 1308.)

31-8-165. Use of segregated account funds; form for reporting provider fee; maintenance of records; inaccurate payments; penalty for failing to pay.

(a) The department shall collect the provider fees imposed pursuant to Code Section 31-8-164. All revenues raised pursuant to this article shall be deposited into the segregated account. Such funds shall be dedicated and used for the sole purpose of obtaining federal financial participation for medical assistance payments to nursing homes that disproportionately serve the medically indigent.

(b) The department shall prepare and distribute a form upon which a nursing home shall calculate and report to the department the provider fee.

(c) Each nursing home shall keep and preserve for a period of three years such books and records as may be necessary to determine the amount for which it is liable under this article. The department shall have the authority to inspect and copy the records of a nursing home for purposes of auditing the calculation of the provider fee. All information obtained by the department pursuant to this article shall be confidential and shall not constitute a public record.

(d) In the event that the department determines that a nursing home has underpaid or overpaid the provider fee, the department shall notify the nursing home of the balance of the provider fee or refund that is due. Such payment or refund shall be due within 30 days of the department's notice.

(e) Any nursing home that fails to pay the provider fee pursuant to this article within the time required by this article shall pay, in addition to the outstanding provider fee, a 6 percent penalty for each month or fraction thereof that the payment is overdue. If a provider fee has not been received by the department by the last day of the month, the department shall withhold an amount equal to the provider fee and penalty owed from any medical assistance payment due such nursing home under the Medicaid program. The provider fee levied by this article shall constitute a debt due the state and may be collected by civil action and the filing of tax liens in addition to such methods provided for in this article. Any penalty that accrues pursuant to this subsection shall be credited to the segregated account. (Code 1981, § 31-8-165, enacted by Ga. L. 2003, p. 435, § 2.)

31-8-166. General Assembly appropriations of segregated funds; match to federal funds; no lapsing at end of fiscal year.

(a) Notwithstanding any other provision of this chapter, the General Assembly is authorized to appropriate as state funds to the department for use in any fiscal year all revenues dedicated and deposited into the segregated account. Such appropriations shall be made for the sole purpose of obtaining federal financial participation in the provision of support to nursing homes that disproportionately serve the medically indigent. Any appropriation from the segregated account for any purpose other than medical assistance payments to nursing homes shall be void.

(b) Revenues appropriated to the department pursuant to this Code section shall be used to match federal funds that are available for the purpose for which such trust funds have been appropriated.

(c) Appropriations from the segregated account to the department shall not lapse to the general fund at the end of the fiscal year. (Code 1981, § 31-8-166, enacted by Ga. L. 2003, p. 435, § 2.)

31-8-167. Annual report by department to General Assembly.

The department shall report annually to the General Assembly on its use of revenues deposited into the segregated account and appropriated to the department pursuant to this article. (Code 1981, § 31-8-167, enacted by Ga. L. 2003, p. 435, § 2.)

31-8-168. Request for waiver from United States Department of Health and Human Services.

No later than July 1, 2003, the department shall prepare and submit to the Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services a request for approval of a waiver pursuant to 42 C.F.R. Section 433.68(e) of the uniform fee requirement. Upon approval of such waiver, the department shall take action to reduce the provider fee imposed pursuant to Code Section 31-8-164 allowed by such waiver for those providers who qualify for such reduction. (Code 1981, § 31-8-168, enacted by Ga. L. 2003, p. 435, § 2.)

31-8-169. Application of the Medical Assistance Act of 1977.

Except where inconsistent with this article, the provisions of Article 7 of Chapter 4 of Title 49, the "Georgia Medical Assistance Act of 1977," shall apply to the department in carrying out the purposes of this article. (Code 1981, § 31-8-169, enacted by Ga. L. 2003, p. 435, § 2.)

ARTICLE 6B**QUALITY ASSESSMENT FEES ON CARE MANAGEMENT ORGANIZATIONS****31-8-170. Legislative authority.**

This article is passed pursuant to the authority of Article III, Section IX, Paragraph VI(i) of the Constitution. (Code 1981, § 31-8-170, enacted by Ga. L. 2005, p. 505, § 1/HB 392.)

31-8-171. Definitions.

As used in this article, the term:

(1) "Care management organization" means an entity granted a certificate of authority under Chapter 21 of Title 33 of the Official Code of Georgia Annotated and which meets the definition found in 42 U.S.C. Sec. 1396b(w)(7)(A)(viii) as it now exists or as it may be amended in the future.

(2) "Department" means the Department of Community Health created by Chapter 2 of this title.

(3) "Gross direct premium" shall have the meaning that the term has in Chapter 8 of Title 33 of the Official Code of Georgia Annotated.

(4) "Quality assessment fee" means the fee imposed pursuant to this article for the privilege of operating a care management organization.

(5) "Segregated account" means an account for the dedication and deposit of provider fees which is established within the Indigent Care Trust Fund created pursuant to Code Section 31-8-152.

(6) "Trust fund" means the Indigent Care Trust Fund created pursuant to Code Section 31-8-152. (Code 1981, § 31-8-171, enacted by Ga. L. 2005, p. 505, § 1/HB 392; Ga. L. 2009, p. 453, § 1-8/HB 228.)

31-8-172. Segregated account for the deposit of fees.

There is established within the trust fund a segregated account for revenues raised through the imposition of the quality assessment fee. All revenues raised through such fees shall be credited to the segregated account within the trust fund and shall be invested in the same manner as authorized for investing other moneys in the state treasury. Contributions and transfers to the trust fund pursuant to Code Sections 31-8-153 and 31-8-153.1 shall not be deposited into the segregated account. (Code 1981, § 31-8-172, enacted by Ga. L. 2005, p. 505, § 1/HB 392.)

31-8-173. Assessment, calculation, and payment of fees.

(a) Each care management organization shall be assessed a quality assessment fee, in an amount to be determined by the department based on anticipated revenue estimates included in the state budget report, with respect to its gross direct premiums. The quality assessment fee shall be assessed uniformly upon all care management organizations. The aggregate quality assessment fees imposed under this article shall not exceed the maximum amount that may be assessed pursuant to 42 C.F.R. Section 433.68(f)(3)(i).

(b) The quality assessment fee shall be paid monthly by each care management organization to the department. A care management organization shall calculate and report its gross direct premiums upon a form prepared by the department and submit therewith payment of the quality assessment fee no later than the tenth day of each calendar month, or in the discretion of the department and upon agreement of the care management organization, said amount may be calculated and withheld by the department from the current month's premium payment. Unless the department withholds the fee from the premium payment, the initial quality assessment fee report shall be filed and the initial payment of the quality assessment fee shall be submitted no later than the tenth day of the first month in which premiums are paid to the care management organizations for medical assistance to recipients. Unless the department withholds the fee from the premium payment, a care management organization shall calculate and report

the initial quality assessment fee using information about its gross direct premiums for the first month in which premiums are paid to the care management organizations for medical assistance to recipients. (Code 1981, § 31-8-173, enacted by Ga. L. 2005, p. 505, § 1/HB 392; Ga. L. 2006, p. 204, § 2/HB 1308.)

31-8-174. Collection and disposition of fees; authority of department to inspect records of care management organizations; overpayment or underpayment; penalty for failure to pay fee.

(a) The department shall collect the quality assessment fees imposed pursuant to Code Section 31-8-173. All revenues raised pursuant to this article shall be deposited into the segregated account. Such funds shall be dedicated and used for the sole purpose of obtaining federal financial participation for medical assistance payments to one or more providers pursuant to Article 7 of Chapter 4 of Title 49 or for purposes as authorized for expenditures from the trust fund.

(b) The department shall prepare and distribute a form upon which a care management organization shall calculate and report to the department the quality assessment fee.

(c) Each care management organization shall keep and preserve for a period of five years such books and records as may be necessary to determine the amount for which it is liable under this article. The department shall have the authority to inspect and copy the records of a care management organization for purposes of auditing the calculation of the quality assessment fee. All information obtained by the department pursuant to this article shall be confidential and shall not constitute a public record; provided, however, that information otherwise available to the public shall not become confidential solely because it has been obtained by the department.

(d) In the event that the department determines that a care management organization has underpaid or overpaid the quality assessment fee, the department shall notify the care management organization of the balance of the quality assessment fee or refund that is due. Such payment or refund shall be due within 30 days of the department's notice.

(e) Any care management organization that fails to pay the quality assessment fee pursuant to this article within the time required by this article shall pay, in addition to the outstanding quality assessment fee, a 6 percent penalty for each month or fraction thereof that the payment is overdue. If a quality assessment fee has not been received by the department by the last day of the month, the department shall withhold an amount equal to the quality assessment fee and penalty owed from

any medical assistance or other payment due such care management organization under the Medicaid program. The quality assessment fee levied by this article shall constitute a debt due the state and may be collected by civil action and the filing of tax liens in addition to such methods provided for in this article. Any penalty that accrues pursuant to this subsection shall be credited to the segregated account. (Code 1981, § 31-8-174, enacted by Ga. L. 2005, p. 505, § 1/HB 392.)

31-8-175. Appropriation of revenues to the department.

(a) Notwithstanding any other provision of this chapter, the General Assembly is authorized to appropriate as state funds to the department for use in any fiscal year all revenues dedicated and deposited into the segregated account. Such appropriations shall be made for the sole purpose of obtaining federal financial participation in the provision of health care services pursuant to Article 7 of Chapter 4 of Title 49 or for purposes as authorized for expenditures from the trust fund. Any appropriation from the segregated account for any purpose other than medical assistance payments shall be void.

(b) Revenues appropriated to the department pursuant to this Code section shall be used to match federal funds that are available for the purpose for which such trust funds have been appropriated.

(c) Appropriations from the segregated account to the department shall not lapse to the general fund at the end of the fiscal year. (Code 1981, § 31-8-175, enacted by Ga. L. 2005, p. 505, § 1/HB 392.)

31-8-176. Annual report by the department.

The department shall report annually to the General Assembly on its use of revenues deposited into the segregated account and appropriated to the department pursuant to this article. (Code 1981, § 31-8-176, enacted by Ga. L. 2005, p. 505, § 1/HB 392.)

31-8-177. Applicability of the Georgia Medical Assistance Act of 1977.

Except where inconsistent with this article, the provisions of Article 7 of Chapter 4 of Title 49, the "Georgia Medical Assistance Act of 1977," shall apply to the department in carrying out the purposes of this article. (Code 1981, § 31-8-177, enacted by Ga. L. 2005, p. 505, § 1/HB 392.)

ARTICLE 6C

PROVIDER PAYMENT AGREEMENT ACT

Effective date. — This article became effective July 1, 2010.

31-8-179. (Repealed effective June 30, 2013) Short title.

This article is enacted pursuant to the authority of Article III, Section IX, Paragraph VI(i) of the Constitution and shall be known and may be cited as the “Provider Payment Agreement Act.” (Code 1981, § 31-8-179, enacted by Ga. L. 2010, p. 9, § 2-1/HB 1055.)

Cross references. — Fees which are nonrevenue measures, § 45-12-92.1.

31-8-179.1. (Repealed effective June 30, 2013) Definitions.

As used in this article, the term:

(1) Reserved.

(2) “Hospital” means an institution licensed pursuant to Chapter 7 of this title which is primarily engaged in providing to inpatients, by or under the supervision of physicians, diagnostic services and therapeutic services for medical diagnosis, treatment, and care of injured, disabled, or sick persons or rehabilitation services for the rehabilitation of injured, disabled, or sick persons. Such term includes public, private, rehabilitative, geriatric, osteopathic, and other specialty hospitals but shall not include psychiatric hospitals as defined in paragraph (7) of Code Section 37-3-1, critical access hospitals as defined in paragraph (3) of Code Section 33-21A-2, or any state owned or state operated hospitals.

(3) “Net patient revenue” means the total gross patient revenue of a hospital less contractual adjustments; charity care; bad debt; Hill-Burton commitments; and indigent care as defined by and calculated in the department’s annual hospital financial survey.

(4) “Provider payment” means the payment imposed pursuant to this article for the privilege of operating a hospital.

(5) “Segregated account” means an account for the dedication and deposit of provider payments which is established within the Indigent Care Trust Fund created pursuant to Code Section 31-8-152.

(6) “Trust fund” means the Indigent Care Trust Fund created pursuant to Code Section 31-8-152. (Code 1981, § 31-8-179.1, enacted by Ga. L. 2010, p. 9, § 2-1/HB 1055.)

31-8-179.2. (Repealed effective June 30, 2013) Establishment of segregated account.

There is established within the trust fund a segregated account for revenues raised through the imposition of the provider payment. All revenues raised through provider payments from hospitals shall be credited to the segregated account within the trust fund. All funds shall be invested in the same manner as authorized for investing other moneys in the state treasury. Contributions and transfers to the trust fund pursuant to Code Sections 31-8-153 and 31-8-153.1 shall not be deposited into the segregated account. (Code 1981, § 31-8-179.2, enacted by Ga. L. 2010, p. 9, § 2-1/HB 1055.)

31-8-179.3. (Repealed effective June 30, 2013) Assessment of provider payments; to be paid by hospital in quarterly installments; payment recognized as expenditure for indigent or charity care.

(a) Each hospital shall be assessed a provider payment in the amount of 1.45 percent of the net patient revenue of the hospital; provided, however, that the Department of Community Health may lower the provider payment percentage for a subclass of hospitals, if necessary, to comply with the broad-based and uniform tests pursuant to 42 C.F.R. Section 433.68.

(b) The provider payment shall be paid quarterly by each hospital to the department. The assessment shall be based on the department's annual hospital financial survey. Payment of the provider payment shall be due at the end of each calendar quarter; the first payment shall be due on September 30.

(c) The provider payment imposed under this article shall be recognized by the department as a form of expenditure for indigent or charity care under any agreement by a hospital to provide a specified amount of clinical health services to indigent patients pursuant to subsection (c) of Code Section 31-6-40.1 and may be considered a community benefit for purposes of any required or voluntary community benefit report filed or prepared by a hospital; provided, however, that the provider payment shall not be considered charity or indigent care for purposes of calculating net patient revenue pursuant to this article. (Code 1981, § 31-8-179.3, enacted by Ga. L. 2010, p. 9, § 2-1/HB 1055; Ga. L. 2011, p. 752, § 31/HB 142.)

The 2011 amendment, effective May 13, 2011, part of an Act to revise, modernize, and correct the Code, substituted "at

the end" for "at end" in the last sentence of subsection (b).

31-8-179.4. (Repealed effective June 30, 2013) Collection; form; record maintenance; time for payment.

(a) The department shall collect the provider payments imposed pursuant to Code Section 31-8-179.3. All revenues raised pursuant to this article shall be deposited into the segregated account. Such funds shall be dedicated and used for the sole purpose of obtaining federal financial participation for medical assistance payments to providers on behalf of Medicaid recipients pursuant to Article 7 of Chapter 4 of Title 49.

(b) The department shall prepare and distribute a form upon which each hospital shall submit information to comply with this article.

(c) Each hospital shall keep and preserve for a period of three years such books and records as may be necessary to determine the amount for which it is liable under this article. The department shall have the authority to inspect and copy the records of a hospital for purposes of auditing the calculation of the provider payment. All information obtained by the department pursuant to this article shall be confidential and shall not constitute a public record.

(d) In the event the department determines that a hospital has underpaid or overpaid the provider payment, the department shall notify the hospital of the balance of the provider payment or refund that is due. Such payment or refund shall be due within 30 days of the department's notice.

(e) Any hospital that fails to pay the provider payment pursuant to this article within the time required by this article shall pay, in addition to the outstanding provider payment, a 6 percent penalty for each month or fraction thereof that the payment is overdue. If a provider payment has not been received by the department by the last day of the month, the department shall withhold an amount equal to the provider payment and penalty owed from any medical assistance payment due such hospital under the Medicaid program. The provider payment levied by this article shall constitute a debt due the state and may be collected by civil action and the filing of tax liens in addition to such methods provided for in this article. Any penalty that accrues pursuant to this subsection shall be credited to the segregated account. (Code 1981, § 31-8-179.4, enacted by Ga. L. 2010, p. 9, § 2-1/HB 1055.)

31-8-179.5. (Repealed effective June 30, 2013) Use of funds for obtaining federal financial participation for medical assistance payments; matching funds.

(a) Notwithstanding any other provision of this chapter, the General Assembly is authorized to appropriate as state funds to the department

for use in any fiscal year all revenues dedicated and deposited into the segregated account. Such appropriations shall be authorized to be made for the sole purpose of obtaining federal financial participation for medical assistance payments to providers on behalf of Medicaid recipients pursuant to Article 7 of Chapter 4 of Title 49. Any appropriation from the segregated account for any purpose other than such medical assistance payments shall be void.

(b) Revenues appropriated to the department pursuant to this Code section shall be used to match federal funds that are available for the purpose for which such trust funds have been appropriated.

(c) Appropriations from the segregated account to the department shall not lapse to the general fund at the end of the fiscal year. (Code 1981, § 31-8-179.5, enacted by Ga. L. 2010, p. 9, § 2-1/HB 1055.)

31-8-179.6. (Repealed effective June 30, 2013) Annual reporting.

The department shall report annually to the General Assembly on its use of revenues deposited into the segregated account and appropriated to the department pursuant to this article. (Code 1981, § 31-8-179.6, enacted by Ga. L. 2010, p. 9, § 2-1/HB 1055.)

31-8-179.7. (Repealed effective June 30, 2013) Application of Georgia Medical Assistance Act of 1977.

Except where inconsistent with this article, the provisions of Article 7 of Chapter 4 of Title 49, the “Georgia Medical Assistance Act of 1977,” shall apply to the department in carrying out the purposes of this article. (Code 1981, § 31-8-179.7, enacted by Ga. L. 2010, p. 9, § 2-1/HB 1055.)

31-8-179.8. (Repealed effective June 30, 2013) Termination date.

This article shall stand repealed on June 30, 2013. (Code 1981, § 31-8-179.8, enacted by Ga. L. 2010, p. 9, § 2-1/HB 1055.)

ARTICLE 7

DISCLOSURE OF TREATMENT OF ALZHEIMER’S DISEASE OR ALZHEIMER’S RELATED DEMENTIA

Cross references. — Immediate investigation for missing person with Alzheimer’s disease, § 35-1-8. Georgia family caregiver support, T. 49, C. 6, A. 6.

Editor’s notes. — By resolution (Ga. L. 2009, p. 400), the General Assembly es-

tablished the Alzheimer’s Disease and Other Dementias Task Force, to be abolished on June 30, 2010.

Law reviews. — For note on the 1995 enactment of this article, see 12 Ga. St. U.L. Rev. 234 (1995).

RESEARCH REFERENCES

Am. Jur. Proof of Facts. — Alzheimer's and Multi-Infarct Dementia — Proceedings to Appoint Guardian Based on Incapacity, 18 POF3d 185.

31-8-180. Definitions.

As used in this article, the term:

(1) "Alzheimer's disease" or "Alzheimer's related dementia" means a progressive, degenerative disease or condition that attacks the brain and results in impaired memory, thinking, and behavior.

(2) "Care," "treatment," and "therapeutic activities" shall not include the sole activity of marketing, selling, manufacturing, or dispensing medication which is approved by the United States Food and Drug Administration and prescribed by a person licensed to practice medicine in accordance with Chapter 34 of Title 43 and informational or support services related to the use of such medication.

(3) "Department" means the Department of Community Health. (Code 1981, § 31-8-180, enacted by Ga. L. 1995, p. 841, § 1; Ga. L. 2011, p. 705, § 4-14/HB 214.)

The 2011 amendment, effective July 1, 2011, added paragraph (3).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1995, a hyphen was deleted between "Alzheimer's" and "related" in paragraph (1).

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

31-8-181. Individuals and hospitals excluded from application of article.

This article shall not apply to the following:

(1) An individual licensed to practice medicine under the provisions of Chapter 34 of Title 43, and persons employed by such an individual, provided that any nursing home, personal care home as defined by Code Section 31-6-2, hospice as defined by Code Section 31-7-172, respite care service as defined by Code Section 49-6-72, adult day program, or home health agency owned, operated, managed, or controlled by a person licensed to practice medicine under the provisions of Chapter 34 of Title 43 shall be subject to the provisions of this article; or

(2) A hospital. However, to the extent that a hospital's nursing home, personal care home as defined by Code Section 31-6-2, hospice as defined by Code Section 31-7-172, respite care service as defined by Code Section 49-6-72, adult day program, or home health agency

holds itself out as providing care, treatment, or therapeutic activities for persons with Alzheimer's disease or Alzheimer's related dementia as part of a specialty unit, such nursing home, personal care home, hospice, respite care service, adult day program, or home health agency shall be subject to the provisions of this article. (Code 1981, § 31-8-181, enacted by Ga. L. 1995, p. 841, § 1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1995, a hyphen was deleted from between "Alzheimer's" and "related" in paragraph (2).

31-8-182. Disclosure of care, treatment, or therapeutic activities required; disclosure form.

(a) Any entity, facility, program, or any instrumentality of the state or political subdivision of the state other than those excluded by Code Section 31-8-181 which advertises, markets, or offers to provide specialized care, treatment, or therapeutic activities for one or more persons with a probable diagnosis of Alzheimer's disease or Alzheimer's related dementia shall disclose the form of care, treatment, or therapeutic activities provided beyond that care, treatment, or therapeutic activities provided to persons who do not have a probable diagnosis of Alzheimer's disease or Alzheimer's related dementia.

(b) The disclosure required by subsection (a) of this Code section shall be made in writing on the disclosure form provided for by subsection (c) of this Code section and provided to any person seeking information concerning placement in or care, treatment, or therapeutic activities from the entity, facility, program, or the instrumentality of the state or of a political subdivision of the state other than those excluded by Code Section 31-8-181.

(c) With input from persons and organizations with experience or expertise regarding care, treatment, or therapeutic activities for persons who have Alzheimer's disease or Alzheimer's related dementia, the department shall develop a standard disclosure form. The disclosure shall be made on such form. The entity, facility, program, or the instrumentality of the state or a political subdivision of the state other than those excluded by Code Section 31-8-181 shall revise the disclosure form whenever significant changes are made. (Code 1981, § 31-8-182, enacted by Ga. L. 1995, p. 841, § 1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1995, a hyphen was deleted from between "Alzheimer's" and "related" in subsections (a) and (c).

31-8-183. Areas covered by disclosure requirements.

The disclosure required by Code Section 31-8-182 shall explain the specialized care, treatment, or therapeutic activities provided to pa-

tients, residents, or participants with Alzheimer's disease or Alzheimer's related dementia in each of the following areas:

(1) The overall philosophy and mission of the entity, facility, program, or of the instrumentality of the state or of a political subdivision of the state other than those excluded by Code Section 31-8-181 which reflects the needs of patients or residents with Alzheimer's disease or Alzheimer's related dementia;

(2) The processes for accepting patients, residents, or participants into the entity, facility, program, or into the instrumentality of the state or of a political subdivision of the state; for discharging patients, residents, or participants from the entity, facility, program, or from the instrumentality of the state or of a political subdivision of the state other than those excluded by Code Section 31-8-181; and for handling emergency situations;

(3) The processes used for defining the programs of services of that entity, facility, program, or of that instrumentality of the state or of a political subdivision of the state other than those excluded by Code Section 31-8-181, including the method by which the program of services responds to changes in the patient's, resident's, or participant's needs;

(4) Staffing, staff training, and continuing education practices;

(5) Description of the physical environment including safety and security features;

(6) The frequency and types of activities for patients, residents, or participants;

(7) The involvement of the entity, facility, program, or of the instrumentality of the state or of a political subdivision of the state other than those excluded by Code Section 31-8-181 with families and family support programs; and

(8) The charge structure of the specialized care, treatment, or therapeutic activities, including any additional fees. (Code 1981, § 31-8-183, enacted by Ga. L. 1995, p. 841, § 1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1995, a hyphen was deleted from between "Alzheimer's" and "related" in paragraph (1).

31-8-184. Failure to provide disclosure; review and verification of disclosure form.

(a) Failure to provide disclosure as required by this article shall be considered a violation of Part 2 of Article 15 of Chapter 1 of Title 10, the "Fair Business Practices Act of 1975," and all public and private

remedies available under such part shall be available with regard to a violation of this article.

(b) Within existing procedures, the department may examine the disclosure form required by this article to verify its accuracy. If determined to be inaccurate, the department shall require the entity, facility, program, or the instrumentality of the state or of a political subdivision of the state other than those excluded by Code Section 31-8-181 either to:

- (1) Provide the specialized care, treatment, or therapeutic activities listed on the disclosure form; or
- (2) Modify the disclosure form to reflect the specialized care, treatment, or therapeutic activities actually being offered.

The entity, facility, program, or the instrumentality of the state or of a political subdivision of the state other than those excluded by Code Section 31-8-181 will make the decision of which alternative listed in paragraph (1) or (2) of this subsection to pursue. Action by the department in pursuit of this subsection shall not affect the licensing process for any entity, facility, program, or the instrumentality of the state or of a political subdivision of the state other than those excluded by Code Section 31-8-181.

(c) For the purposes of the review and verification referred to in subsection (b) of this Code section, the disclosure form being provided to the public at the time of the review and verification shall be used. (Code 1981, § 31-8-184, enacted by Ga. L. 1995, p. 841, § 1.)

ARTICLE 8

“HEALTH SHARE” VOLUNTEERS IN MEDICINE

Cross references. — Volunteers in health care specialties, § 43-1-28. Georgia Volunteers in Medicine Health Care Act, § 43-34-41. Liability of voluntary health care providers and sponsoring organizations, § 51-1-29.4.

Administrative rules and regula-

tions. — Georgia Volunteer Health Care Program, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Community Health, Georgia Volunteer Health Care Plan, Chapter 111-5-1.

31-8-190. Short title.

This article shall be known and may be cited as the “Health Share’ Volunteers in Medicine Act.” (Code 1981, § 31-8-190, enacted by Ga. L. 2005, p. 1493, § 1/HB 166.)

31-8-191. Legislative findings and intent.

The General Assembly finds that a significant proportion of the residents of this state who are uninsured or Medicaid recipients are unable to access needed health care because health care providers fear the increased risk of medical negligence liability. It is the intent of the General Assembly that access to medical care for indigent residents be improved by providing governmental protection to health care providers who offer free quality medical services to underserved populations of the state. Therefore, it is the intent of the General Assembly to ensure that health care professionals who contract to provide such services as agents of the state are provided sovereign immunity. (Code 1981, § 31-8-191, enacted by Ga. L. 2005, p. 1493, § 1/HB 166.)

31-8-192. Definitions.

As used in this article, the term:

(1) “Contract” means an agreement executed in compliance with this article between a health care provider and a governmental contractor. This contract shall allow the health care provider to deliver health care services to low-income recipients as an agent of the governmental contractor. The contract must be for volunteer, uncompensated services. Payments made to a health care provider from the Indigent Care Trust Fund shall not constitute compensation under this article.

(2) “Department” means the Department of Public Health.

(3) “Disciplinary action” means any action taken by a licensing board to reprimand a medical practitioner included as a health care provider pursuant to paragraph (5) of this Code section for inappropriate or impermissible behavior.

(4) “Governmental contractor” means the department or its designee or designees.

(5) “Health care provider” or “provider” means:

(A) An ambulatory surgical center licensed under Article 1 of Chapter 7 of this title;

(B) A hospital or nursing home licensed under Article 1 of Chapter 7 of this title;

(C) A physician or physician assistant licensed under Article 2 of Chapter 34 of Title 43;

(D) An osteopathic physician or osteopathic physician assistant licensed under Article 2 of Chapter 34 of Title 43;

- (E) A chiropractic physician licensed under Chapter 9 of Title 43;
- (F) A podiatric physician licensed under Chapter 35 of Title 43;
- (F.1) A physical therapist licensed under Chapter 33 of Title 43;
- (G) A registered nurse, nurse midwife, licensed practical nurse, or advanced registered nurse practitioner licensed or registered under Chapter 26 of Title 43 or any facility which employs nurses licensed or registered under Chapter 26 of Title 43 to supply all or part of the care delivered under this article;
- (H) A midwife certified under Chapter 26 of this title;
- (I) A speech-language pathologist or audiologist licensed under Chapter 44 of Title 43;
- (J) An optometrist certified under Chapter 30 of Title 43;
- (K) A professional counselor, social worker, or marriage and family therapist licensed under Chapter 10A of Title 43;
- (L) An occupational therapist licensed under Chapter 28 of Title 43;
- (M) A psychologist licensed under Chapter 39 of Title 43;
- (N) A dietitian licensed under Chapter 11A of Title 43;
- (O) A pharmacist licensed under Chapter 4 of Title 26;
- (P) A health maintenance organization certificated under Chapter 21 of Title 33;
- (Q) A professional association, professional corporation, limited liability company, limited liability partnership, or other entity which provides or has members which provide health care services;
- (R) A safety net clinic, which includes any other medical facility the primary purpose of which is to deliver human dental or medical diagnostic services or which delivers nonsurgical human medical treatment and which may include an office maintained by a provider;
- (S) A dentist or dental hygienist licensed under Chapter 11 of Title 43; or
- (T) Any other health care professional, practitioner, provider, or facility under contract with a governmental contractor, including a student enrolled in an accredited program that prepares the student for licensure as any one of the professionals listed in subparagraphs (C) through (O) of this paragraph.

The term includes any nonprofit corporation qualified as exempt from federal income taxation under Section 501(c) of the Internal Revenue

Code which delivers health care services provided by licensed professionals listed in this paragraph, any federally funded community health center, and any volunteer corporation or volunteer health care provider that delivers health care services.

(6) “Low-income” means:

(A) A person who is Medicaid eligible under the laws of this state;

(B) A person:

(i) Who is without health insurance; or

(ii) Who has health insurance that does not cover the injury, illness, or condition for which treatment is sought; and

whose family income does not exceed 200 percent of the federal poverty level as defined annually by the federal Office of Management and Budget;

(C) A person:

(i) Who is without dental insurance; or

(ii) Who has dental insurance that does not cover the injury, illness, or condition for which treatment is sought; and

whose family income does not exceed 200 percent of the federal poverty level as defined annually by the federal Office of Management and Budget; or

(D) Any client or beneficiary of the department, the Department of Human Services, or the Department of Behavioral Health and Developmental Disabilities who voluntarily chooses to participate in a program offered or approved by the department, the Department of Human Services, or the Department of Behavioral Health and Developmental Disabilities and meets the program eligibility guidelines of the department, the Department of Human Services, or the Department of Behavioral Health and Developmental Disabilities whose family income does not exceed 200 percent of the federal poverty level as defined annually by the federal Office of Management and Budget.

(7) “Occasional-service volunteer” means a volunteer who provides one-time or occasional volunteer service.

(8) “Regular-service volunteer” means a volunteer engaged in specific voluntary service activities on an ongoing or continuous basis.

(9) “Restriction” means any limitation imposed by a licensing board on a medical practitioner included as a health care provider pursuant to paragraph (5) of this Code section.

(10) “Sanction” means any penalty imposed by a licensing board or other regulatory entity on a medical practitioner included as a health care provider pursuant to paragraph (5) of this Code section.

(11) “Volunteer” means any person who, of his or her own free will, and in support of or in assistance to the program of health care services provided pursuant to this article to any governmental contractor, provides goods or clerical services, computer services, or administrative support services, with or without monetary or material compensation. This term shall not include a health care provider. (Code 1981, § 31-8-192, enacted by Ga. L. 2005, p. 1493, § 1/HB 166; Ga. L. 2006, p. 72, § 31/SB 465; Ga. L. 2006, p. 215, § 1/HB 1224; Ga. L. 2008, p. 354, § 1/HB 1222; Ga. L. 2009, p. 453, § 1-34/HB 228; Ga. L. 2009, p. 613, § 1/SB 133; Ga. L. 2011, p. 705, § 6-3/HB 214.)

The 2011 amendment, effective July 1, 2011, substituted “Department of Public Health” for “Department of Community Health” in paragraph (2).

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

31-8-193. Establishment of program; contracts with health care providers.

(a) The department is authorized and directed to establish a program pursuant to this article to provide for health care services to low-income recipients. The department shall enter into contracts to effectuate the purposes of this article. The department shall make reasonable efforts to promote the program to ensure awareness and participation by low-income recipients. It is the intent of the General Assembly that this program be established as soon as is practicable after July 1, 2005, and that the program be implemented state wide at the earliest possible date, subject to available funding.

(b) A health care provider that executes a contract with a governmental contractor to deliver health care services on or after July 1, 2005, as an agent of the governmental contractor shall be considered a state officer or employee for purposes of Article 2 of Chapter 21 of Title 50, while acting within the scope of duties pursuant to the contract, if the contract complies with the requirements of this article and regardless of whether the individual treated is later found to be ineligible. A health care provider acting under the terms of a contract with a governmental contractor may not be named as a defendant in any action arising out of the medical care or treatment provided on or after July 1, 2005, pursuant to contracts entered into under this article. The contract must provide that:

(1) The right of dismissal or termination of any health care provider delivering services pursuant to the contract is retained by the governmental contractor;

(2) The governmental contractor has access to the patient records of patients provided services pursuant to this article of any health care provider delivering services pursuant to the contract;

(3) Adverse incidents and information on treatment outcomes, as defined by the department and in accordance with the rules and regulations of the department, must be reported by any health care provider to the governmental contractor if such incidents and information pertain to a patient treated pursuant to the contract. If an incident involves a licensed professional or a licensed facility, the governmental contractor shall submit such incident reports to the appropriate department, agency, or board, which shall review each incident and determine whether it involves conduct by the licensee that is subject to disciplinary action. All patient medical records and any identifying information contained in adverse incident reports and treatment outcomes which are obtained by governmental entities pursuant to this paragraph are confidential and exempt from the provisions of Article 4 of Chapter 18 of Title 50;

(4) The health care provider shall provide services to patients on a walk-in and referral basis, in accordance with the terms of the contract. The provider must accept all referred patients; provided, however, that the number of patients that must be accepted may be limited under the terms of the contract;

(5) The health care provider shall not provide services to a patient unless such patient has received and signed the notice required in Code Section 31-8-194; provided, however, in cases of emergency care, the patient's legal representative shall be required to receive and sign the notice, or if such individual is unavailable, such patient shall receive and sign the notice within 48 hours after the patient has the mental capacity to consent to treatment;

(6) Patient care and health care services shall be provided in accordance with the terms of the contract and with rules and regulations as established by the department pursuant to this article. Experimental procedures and clinically unproven procedures shall not be provided or performed pursuant to this article. The governmental contractor may reserve the right to approve through written protocols any specialty care services and hospitalization, except emergency care as provided for in paragraph (5) of this subsection; and

(7) The provider is subject to supervision and regular inspection by the governmental contractor.

(c) In order to enter into a contract under this Code section, a health care provider shall:

(1) Have a current valid Georgia health professional license;

(2) Not be under probation or suspension by the applicable licensing board or subject to other restrictions, sanctions, or disciplinary actions imposed by the applicable licensing board. The department, in its discretion, shall determine if a past restriction, sanction, or disciplinary action imposed by the applicable licensing board is of such a grave and offensive nature with respect to patient safety concerns as to warrant refusal to enter into a contract with such health care provider pursuant to this subsection;

(3) Not be subject to intermediate sanction by the Centers for Medicare and Medicaid Services for medicare or Medicaid violations or be subject to sanctions with regard to other federally funded health care programs; and

(4) Submit to a credentialing process to determine acceptability of participation.

(d) The provider shall not subcontract for the provision of services under this chapter.

(e) A contract entered into pursuant to this Code section shall be effective for all services provided by the health care provider pursuant to this chapter, without regard to when the services are performed. (Code 1981, § 31-8-193, enacted by Ga. L. 2005, p. 1493, § 1/HB 166; Ga. L. 2008, p. 354, § 2/HB 1222; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214; Ga. L. 2012, p. 775, § 31/HB 942.)

The 2011 amendment, effective July 1, 2011, substituted “Department of Public Health” for “Department of Community Health” in the first sentence of paragraph (b)(3).

The 2012 amendment, effective May 1, 2012, part of an Act to revise, modernize, and correct the Code, substituted “the department” for “the Department of Public Health” in paragraph (b)(3).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2005, “July 1, 2005,” was substituted for “the effective date of this article” in the last sentence of

subsection (a); a semicolon was substituted for a period at the end of paragraphs (b)(4) and (b)(5); and “; and” was substituted for a period at the end of paragraph (b)(6).

Administrative rules and regulations. — Georgia Volunteer Health Care Program, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Community Health, Chapter 111-5-1.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

31-8-194. Notice to patients required.

The governmental contractor or the health care provider if designated in the contract must provide written notice to each patient or the patient’s legal representative, receipt of which must be acknowledged in writing, that the provider is a state employee or officer for purposes of this article and that the exclusive remedy for injury or damage suffered as the result of any act or omission of a provider acting within the scope of duties pursuant to a contract is by commencement of an

action pursuant to the provisions of Article 2 of Chapter 21 of Title 50 and that a remedy or remedies for injury or damage suffered as the result of any act or omission of a provider acting outside the scope of duties shall be as provided for under general tort law or other applicable law. (Code 1981, § 31-8-194, enacted by Ga. L. 2005, p. 1493, § 1/HB 166.)

31-8-195. Volunteers to provide services.

(a) Every governmental contractor is authorized to recruit, train, and accept the services of volunteers, including regular-service volunteers and occasional-service volunteers in support of or in assistance to the program of health care services provided pursuant to this article to provide services, including but not limited to clerical, computer, and administrative support.

(b) Prior to providing any services, a volunteer shall enter into a written agreement with the governmental contractor in a form as prescribed by the department.

(c) Each governmental contractor utilizing the services of volunteers pursuant to this Code section shall:

(1) Take such actions as are necessary to ensure that volunteers understand their duties and responsibilities;

(2) Take such actions as are necessary to ensure that volunteers are made aware of and follow all applicable health and safety rules, regulations, and procedures;

(3) Take such actions as are necessary to ensure that volunteers are provided appropriate oversight and guidance in the performance of their volunteer service; and

(4) Ensure that each volunteer enters into a written agreement with the governmental contractor in accordance with subsection (b) of this Code section.

(d) A volunteer shall be considered a state employee or officer for purposes of Article 2 of Chapter 21 of Title 50 while performing services pursuant to and in accordance with this Code section. (Code 1981, § 31-8-195, enacted by Ga. L. 2005, p. 1493, § 1/HB 166.)

Administrative rules and regulations. — Georgia Volunteer Health Care Program, Official Compilation of the

Rules and Regulations of the State of Georgia, Department of Community Health, Chapter 111-5-1.

31-8-195.1. Sovereign immunity protection for health care professionals in safety net clinics.

(a) A registered professional nurse, nurse midwife, licensed practical nurse, or advanced practice registered nurse licensed or registered under Chapter 26 of Title 43 or a physician assistant licensed pursuant to Article 4 of Chapter 34 of Title 43 who is employed by a safety net clinic that executes a contract with a governmental contractor pursuant to this article shall be considered a state officer or employee for purposes of Article 2 of Chapter 21 of Title 50 while providing health care services pursuant to such contract, so long as such nurse or physician assistant provides nonemergent care and such nurse's or physician assistant's total compensation, including all cash and noncash remunerations, does not fluctuate in relation to:

- (1) The number of patients served in the clinic;
- (2) The number of patient visits to the clinic;
- (3) Treatments in the clinic; or

(4) Any other fact relating to the number of patient contacts or services rendered

pursuant to a contract under this article.

(b) A physician licensed pursuant to Chapter 34 of Title 43 or medical resident who provides nonemergent medical care and treatment in a safety net clinic that executes a contract with a governmental contractor pursuant to this article shall be considered a state officer or employee for purposes of Article 2 of Chapter 21 of Title 50 while providing health care services pursuant to such contract, so long as the physician is practicing pursuant to a license issued under Code Section 43-34-41 or the physician or resident receives no compensation from the safety net clinic and is on staff at a local or regional hospital and provided that the physician's total compensation, including all cash and noncash remunerations, does not fluctuate in relation to:

- (1) The number of patients served in the clinic;
- (2) The number of patient visits to the clinic;
- (3) Treatments in the clinic; or

(4) Any other fact relating to the number of patient contacts or services rendered

pursuant to a contract under this article.

(c) No hospital shall require a physician to provide services at a safety net clinic as a condition for granting of staff privileges or for retaining staff privileges at such hospital.

(d) This Code section shall be supplemental to all other provisions of law that provide defenses to health care providers. This Code section shall not create any new cause of action against a health care provider or additional liability to health care providers. (Code 1981, § 31-8-195.1, enacted by Ga. L. 2009, p. 613, § 2/SB 133; Ga. L. 2010, p. 209, § 1/SB 344.)

The 2010 amendment, effective July 1, 2010, in the introductory language of subsection (a), inserted “or a physician assistant licensed pursuant to Article 4 of Chapter 34 of Title 43” near the middle, and inserted “or physician assistant” and inserted “or physician assistant’s” near the end.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2009, “43-34-41” was substituted for “43-34-45.1” in subsection (b).

Law reviews. — For annual survey of law on trial practice and procedure, see 62 Mercer L. Rev. 339 (2010).

31-8-196. Exemption from employment regulations.

Health care providers and volunteers recruited, trained, or accepted under this article shall not be subject to any provisions of the laws of this state relating to state employment, collective bargaining, hours of work, rates of compensation, leave time, or employee benefits. However, all health care providers and volunteers shall comply with applicable department or agency rules and regulations. Health care providers who are individuals and volunteers shall be considered as unpaid independent volunteers and shall not be entitled to unemployment compensation. (Code 1981, § 31-8-196, enacted by Ga. L. 2005, p. 1493, § 1/HB 166.)

31-8-197. Annual report of claims statistics.

The Department of Administrative Services shall annually compile a report of all claims statistics which shall include the number and total of all claims pending and paid, and defense and handling costs associated with all claims brought against contract providers under this article. This report shall be forwarded to the department and included in the annual report submitted to the General Assembly pursuant to Code Section 31-8-198. (Code 1981, § 31-8-197, enacted by Ga. L. 2005, p. 1493, § 1/HB 166.)

31-8-198. Annual report by the department summarizing the efficiency of access and treatment outcomes.

Annually, the department shall report to the President of the Senate, the Speaker of the House of Representatives, the minority leaders of each house, and chairpersons of the House Health and Human Services Committee and the Senate Health and Human Services Committee, summarizing the efficacy of access and treatment outcomes with

respect to providing health care services for low-income persons pursuant to this article. (Code 1981, § 31-8-198, enacted by Ga. L. 2005, p. 1493, § 1/HB 166.)

31-8-199. Department's responsibilities regarding liability insurance.

The department shall be responsible for and shall pay such amounts as determined by the Department of Administrative Services for insurance premiums for liability coverage for the cost of claims and defense against litigation arising out of health care services delivered pursuant to this article. The department shall be responsible for submitting to the Department of Administrative Services all underwriting information requested by and all insurance premiums assessed by the Department of Administrative Services. The department shall annually report to the Department of Administrative Services the number and type of providers who have entered into a contract pursuant to this article. (Code 1981, § 31-8-199, enacted by Ga. L. 2005, p. 1493, § 1/HB 166.)

31-8-200. Adoption of rules and regulations.

The department shall adopt rules and regulations to administer this article in a manner consistent with its purpose to provide and facilitate access to appropriate, safe, and cost-effective health care services and to maintain health care quality. All providers and volunteers shall be subject to such rules and regulations. The rules may include services to be provided and authorized procedures. (Code 1981, § 31-8-200, enacted by Ga. L. 2005, p. 1493, § 1/HB 166.)

31-8-201. Applicability; preservation of the state's rights under the Tort Claims Act.

This article applies to incidents occurring on or after July 1, 2005. Nothing in this article in any way reduces or limits the rights of the state or any of its agencies or subdivisions to any benefit currently provided under Article 2 of Chapter 21 of Title 50. (Code 1981, § 31-8-201, enacted by Ga. L. 2005, p. 1493, § 1/HB 166.)

CHAPTER 9

CONSENT FOR SURGICAL OR MEDICAL TREATMENT

Sec.		Sec.	
31-9-1.	Short title.	31-9-6.1.	Disclosure of certain information to persons undergoing certain surgical or diagnostic procedures; failure to comply; exceptions; regulations establishing standards for implementation.
31-9-2.	Persons authorized to consent to surgical or medical treatment.	31-9-7.	Right of persons who are at least 18 years of age to refuse to consent to treatment.
31-9-3.	Emergencies.		
31-9-4.	Applicability of chapter to care and treatment of mentally ill.		
31-9-5.	Applicability of chapter to abortion and sterilization procedures.		
31-9-6.	Construction of chapter; requirements of valid consent.		

Administrative rules and regulations. — Rules and regulations for hospitals, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Human Resources (now the Department of Community Health for these purposes), Office of Regulatory Services, Chapter 290-9-7.

Informed consent, Official Compilation of the Rules and Regulations of the State of Georgia, Composite State Board of Medical Examiners, Chapter 360-14.

Law reviews. — For article, “Informed

Consent: New Georgia Guidelines,” discussing law of medical consent in Georgia, in light of *Young v. Yarn*, 136 Ga. App. 737, 222 S.E.2d 113 (1975), see 12 Ga. St. B.J. 197 (1976). For article, “*Res Ipsa Loquitur* and Medical Malpractice in Georgia: A Reassessment,” see 17 Ga. L. Rev. 33 (1982). For article, “*Baby Doe Cases: Compromise and Moral Dilemma*,” see 34 Emory L.J. 545 (1986).

For note, “The Evolution of the Doctrine of Informed Consent,” see 12 Ga. L. Rev. 581 (1978).

JUDICIAL DECISIONS

Cited in *Watson v. Worthy*, 151 Ga. App. 131, 259 S.E.2d 138 (1979).

RESEARCH REFERENCES

Am. Jur. 2d. — 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers, §§ 150, 151, 152, 156.

C.J.S. — 70 C.J.S., Physicians, Surgeons, and Other Health Care Providers, §§ 90 et seq., 116.

ALR. — Consent as condition of right to perform surgical operation, 76 ALR 562; 139 ALR 1370.

Mental competency of patient to consent to surgical operation or medical treatment, 25 ALR3d 1439.

Necessity and sufficiency of expert evidence to establish existence and extent of physician’s duty to inform patient of risks of proposed treatment, 52 ALR3d 1084.

Power of court or other public agency to order medical treatment for child over parental objections not based on religious grounds, 97 ALR3d 421.

Medical practitioner’s liability for treatment given child without parent’s consent, 67 ALR4th 511.

Power of court or other public agency to

order medical treatment over parental religious objections for child whose life is not immediately endangered, 21 ALR5th 248.

31-9-1. Short title.

This chapter shall be known and may be cited as the "Georgia Medical Consent Law." (Code 1933, § 88-2901, enacted by Ga. L. 1971, p. 438, § 1.)

31-9-2. Persons authorized to consent to surgical or medical treatment.

(a) In addition to such other persons as may be authorized and empowered, any one of the following persons is authorized and empowered to consent, either orally or otherwise, to any surgical or medical treatment or procedures not prohibited by law which may be suggested, recommended, prescribed, or directed by a duly licensed physician:

(1) Any adult, for himself or herself, whether by living will, advance directive for health care, or otherwise;

(1.1) Any person authorized to give such consent for the adult under an advance directive for health care or durable power of attorney for health care under Chapter 32 of this title;

(2) In the absence or unavailability of a person authorized pursuant to paragraph (1.1) of this subsection, any married person for his or her spouse;

(3) In the absence or unavailability of a living spouse, any parent, whether an adult or a minor, for his or her minor child;

(4) Any person temporarily standing in loco parentis, whether formally serving or not, for the minor under his or her care; and any guardian, for his or her ward;

(5) Any female, regardless of age or marital status, for herself when given in connection with pregnancy, or the prevention thereof, or childbirth;

(6) Upon the inability of any adult to consent for himself or herself and in the absence of any person to consent under paragraphs (1.1) through (5) of this subsection, the following persons in the following order of priority:

(A) Any adult child for his or her parents;

(B) Any parent for his or her adult child;

(C) Any adult for his or her brother or sister;

(D) Any grandparent for his or her grandchild;

(E) Any adult grandchild for his or her grandparent; or

(F) Any adult niece, nephew, aunt, or uncle of the patient who is related to the patient in the first degree; or

(7) Upon the inability of any adult to consent for himself or herself and in the absence of any person to consent under paragraphs (1.1) through (6) of this subsection, an adult friend of the patient. For purposes of this paragraph, “adult friend” means an adult who has exhibited special care and concern for the patient, who is generally familiar with the patient’s health care views and desires, and who is willing and able to become involved in the patient’s health care decisions and to act in the patient’s best interest. The adult friend shall sign and date an acknowledgment form provided by the hospital or other health care facility in which the patient is located for placement in the patient’s records certifying that he or she meets such criteria.

(a.1) In the absence, after reasonable inquiry, of any person authorized in subsection (a) of this Code section to consent for the patient, a hospital or other health care facility or any interested person may initiate proceedings for expedited judicial intervention to appoint a temporary medical consent guardian pursuant to Code Section 29-4-18.

(b) Any person authorized and empowered to consent under subsection (a) of this Code section shall, after being informed of the provisions of this Code section, act in good faith to consent to surgical or medical treatment or procedures which the patient would have wanted had the patient understood the circumstances under which such treatment or procedures are provided. The person who consents on behalf of the patient in accordance with subsection (a) of this Code section shall have the right to visit the patient in accordance with the hospital or health care facility’s visitation policy.

(c) For purposes of this Code section, the term “inability of any adult to consent for himself or herself” means a determination in the medical record by a licensed physician after the physician has personally examined the adult that the adult “lacks sufficient understanding or capacity to make significant responsible decisions” regarding his or her medical treatment or the ability to communicate by any means such decisions.

(d)(1) No hospital or other health care facility, health care provider, or other person or entity shall be subject to civil or criminal liability or discipline for unprofessional conduct solely for relying in good faith on any direction or decision by any person reasonably believed to be authorized and empowered to consent under subsection (a) of this

Code section even if death or injury to the patient ensues. Each hospital or other health care facility, health care provider, and any other person or entity who acts in good faith reliance on any such direction or decision shall be protected and released to the same extent as though such person had interacted directly with the patient as a fully competent person.

(2) No person authorized and empowered to consent under subsection (a) of this Code section who, in good faith, acts with due care for the benefit of the patient, or who fails to act, shall be subject to civil or criminal liability for such action or inaction. (Code 1933, § 88-2904, enacted by Ga. L. 1971, p. 438, § 1; Ga. L. 1972, p. 688, § 1; Ga. L. 1975, p. 704, § 2; Ga. L. 1991, p. 335, § 1; Ga. L. 2001, p. 4, § 31; Ga. L. 2007, p. 133, § 12/HB 24; Ga. L. 2010, p. 852, § 1/SB 367.)

The 2010 amendment, effective June 3, 2010, substituted “this title” for “Title 31” at the end of paragraph (a)(1.1); added present paragraph (a)(2); redesignated former paragraph (a)(2) as present paragraph (a)(3); and deleted former paragraph (a)(3), which read: “Any married person, whether an adult or a minor, for himself or herself and for his or her spouse;”; deleted “or” at the end of paragraph (a)(5); in paragraph (a)(6), substituted “(1.1)” for “(2)” in the middle of the introductory language, deleted “or” at the end of subparagraph (a)(6)(C), substituted a semicolon for a period at the end of subparagraph (a)(6)(D), and added subparagraphs (a)(6)(E) and (a)(6)(F); added paragraph (a)(7); added subsection (a.1); added the last sentence to subsection (b); in subsection (c), inserted “the term” and substituted “or herself means” for “shall mean” near the beginning, and inserted “or her” following “his” near the end; and added subsection (d).

Cross references. — Authority of court in juvenile proceeding to order that child undergo medical examination or treatment, § 15-11-12. Termination of temporary medical consent guardianship, § 29-4-18. Right of minor to obtain medical services for treatment of venereal disease on minor’s consent alone, § 31-17-7. Effect of consent by husband and wife to performance of artificial insemination procedure, § 43-34-37. Consent of parent or guardian to blood donation by person 17 years of age or over, § 44-5-89.

Editor’s notes. — Ga. L. 2007, p. 133, § 1/HB 24, not codified by the General Assembly, provides: “(a) The General Assembly has long recognized the right of the individual to control all aspects of his or her personal care and medical treatment, including the right to insist upon medical treatment, decline medical treatment, or direct that medical treatment be withdrawn. In order to secure these rights, the General Assembly has adopted and amended statutes recognizing the living will and health care agency and provided statutory forms for both documents.

“(b) The General Assembly has determined that the statutory forms for the living will and durable power of attorney for health care are confusing and inconsistent and that the statutes providing for the living will and health care agency contain conflicting concepts, inconsistent and out-of-date terminology, and confusing and inconsistent requirements for execution. In addition, there is a commendable trend among the states to combine the concepts of the living will and health care agency into a single legal document.

“(c) The General Assembly recognizes that a significant number of individuals representing the academic, medical, legislative, and legal communities, state officials, ethics scholars, and advocacy groups worked together to develop the advance directive for health care contained in this Act, and the collective intent was to create a form that uses understandable and everyday language in order to encourage

more citizens of this state to execute advance directives for health care.

“(d) The General Assembly finds that the clear expression of an individual’s decisions regarding health care, whether made by the individual or an agent appointed by the individual, is of critical importance not only to citizens but also to the health care and legal communities,

third parties, and families. In furtherance of these purposes, the General Assembly enacts a new Chapter 32 of Title 31, setting forth general principles governing the expression of decisions regarding health care and the appointment of a health care agent, as well as a form of advance directive for health care.”

JUDICIAL DECISIONS

Consent may be manifest by acts and conduct. — Consent to medical or surgical treatment may be manifest by acts and conduct, and need not necessarily be shown by writing or by express words. It may be implied from voluntary submission to treatment with full knowledge of what is going on. *Smith v. Luckett*, 155 Ga. App. 640, 271 S.E.2d 891 (1980).

Minors may not refuse unwanted

care. — Georgia provides no “mature minor” exception to the state’s general rule that only adults may refuse unwanted medical care. *Novak v. Cobb County-Kennestone Hosp. Auth.*, 849 F. Supp. 1559 (N.D. Ga. 1994), *aff’d*, 74 F.3d 1173 (11th Cir. 1996).

Cited in *In re Doe*, 262 Ga. 389, 418 S.E.2d 3 (1992).

OPINIONS OF THE ATTORNEY GENERAL

Practice of acupuncture constitutes practice of medicine under laws of Georgia. 1973 Op. Att’y Gen. No. 73-131.

Minor unmarried female’s right to consent limited. — Whether minor, unmarried female under age of 18 years, can

consent to medical treatment for herself when offered in conjunction with family planning services would depend in each instance on a determination of whether medical treatment was given in connection with pregnancy or childbirth. 1971 Op. Att’y Gen. No. 71-177.

RESEARCH REFERENCES

Am. Jur. 2d. — 59 Am. Jur. 2d, Parent and Child, §§ 71, 76. 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers, §§ 157 et seq., 180, 314 et seq.

C.J.S. — 70 C.J.S., Physicians, Surgeons, and Other Health Care Providers, §§ 90 et seq., 116.

ALR. — Consent as condition of right to perform surgical operation, 76 ALR 562; 139 ALR 1370.

Mental competency of patient to consent to surgical operation or medical treatment, 25 ALR3d 1439.

Necessity and sufficiency of expert evidence to establish existence and extent of physician’s duty to inform patient of risks of proposed treatment, 52 ALR3d 1084.

Malpractice: questions of consent in connection with treatment of genital or urinary organs, 89 ALR3d 32.

Power of court or other public agency to order medical treatment over parental religious objections for child whose life is not immediately endangered, 21 ALR5th 248.

31-9-3. Emergencies.

(a) As used in this Code section, the term “emergency” means a situation wherein (1) according to competent medical judgment, the proposed surgical or medical treatment or procedures are reasonably

necessary and (2) a person authorized to consent under Code Section 31-9-2 is not readily available and any delay in treatment could reasonably be expected to jeopardize the life or health of the person affected or could reasonably result in disfigurement or impaired faculties.

(b) In addition to any instances in which a consent is excused or implied at law, a consent to surgical or medical treatment or procedures suggested, recommended, prescribed, or directed by a duly licensed physician will be implied where an emergency exists. (Code 1933, § 88-2905, enacted by Ga. L. 1971, p. 438, § 1.)

Cross references. — Further provisions regarding liability for rendering of emergency care, §§ 31-11-8, 51-1-29.

JUDICIAL DECISIONS

Cited in *Winfrey v. Citizens & S. Nat'l Bank*, 149 Ga. App. 488, 254 S.E.2d 725 (1979); *Davis v. Charter By-The-Sea, Inc.*, 183 Ga. App. 213, 358 S.E.2d 865 (1987).

RESEARCH REFERENCES

Am. Jur. 2d. — 59 Am. Jur. 2d, Parent and Child, § 71. 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers, § 158.

C.J.S. — 67A C.J.S., Parent and Child, §§ 38, 40, 41, 46 et seq. 70 C.J.S., Physicians, Surgeons, and Other Health Care Providers, § 90 et seq.

ALR. — Consent as condition of right to perform surgical operation, 76 ALR 562; 139 ALR 1370.

Liability of physician or surgeon for

extending operation or treatment beyond that expressly authorized, 56 ALR2d 695.

Malpractice: questions of consent in connection with treatment of genital or urinary organs, 89 ALR3d 32.

Malpractice in connection with electroshock treatment, 94 ALR3d 317.

Power of court or other public agency to order medical treatment over parental religious objections for child whose life is not immediately endangered, 21 ALR5th 248.

31-9-4. Applicability of chapter to care and treatment of mentally ill.

This chapter shall be applicable to the care and treatment of patients in facilities for the mentally ill as defined in paragraph (7) of Code Section 37-3-1. (Code 1933, § 88-2903, enacted by Ga. L. 1971, p. 438, § 1; Ga. L. 1975, p. 704, § 1.)

RESEARCH REFERENCES

ALR. — Mental competency of patient to consent to surgical operation or medical treatment, 25 ALR3d 1439.

Right of state prison authorities to ad-

minister neuroleptic or antipsychotic drugs to prisoner without his or her consent — state cases, 75 ALR4th 1124.

31-9-5. Applicability of chapter to abortion and sterilization procedures.

This chapter shall not apply in any manner whatsoever to abortion and sterilization procedures, which procedures shall continue to be governed by existing law independently of the terms and provisions of this chapter. (Code 1933, § 88-2902, enacted by Ga. L. 1971, p. 438, § 1.)

Cross references. — Abortion generally, § 16-12-140 et seq. Performance of sterilization procedure, T. 31, C. 20.

JUDICIAL DECISIONS

Chapter specifically excludes sterilization procedures which are governed by Voluntary Sterilization Act, O.C.G.A. § 31-20-2. Robinson v. Parrish, 251 Ga. 496, 306 S.E.2d 922 (1983).

Cited in Robinson v. Parrish, 720 F.2d 1548 (11th Cir. 1983).

RESEARCH REFERENCES

ALR. — Right of minor to have abortion performed without parental consent, 42 ALR3d 1406.

Woman's right to have abortion without consent of, or against objections of, child's father, 62 ALR3d 1097.

Validity of state "informed consent" statutes by which providers of abortions

are required to provide patient seeking abortion with certain information, 119 ALR5th 315.

Women's reproductive rights concerning abortion, and governmental regulation thereof — Supreme Court cases, 20 ALR Fed. 2d 1.

31-9-6. Construction of chapter; requirements of valid consent.

(a) This chapter shall be liberally construed, and all relationships set forth in this chapter shall include the adoptive, foster, and step relations as well as blood relations and the relationship by common-law marriage as well as ceremonial marriage.

(b) A consent by one person authorized and empowered to consent to surgical or medical treatment shall be sufficient.

(c) Any person acting in good faith shall be justified in relying on the representations of any person purporting to give consent, including, but not limited to, his identity, his age, his marital status, his emancipation, and his relationship to any other person for whom the consent is purportedly given.

(d) A consent to surgical or medical treatment which discloses in general terms the treatment or course of treatment in connection with which it is given and which is duly evidenced in writing and signed by

the patient or other person or persons authorized to consent pursuant to the terms of this chapter shall be conclusively presumed to be a valid consent in the absence of fraudulent misrepresentations of material facts in obtaining the same. (Code 1933, § 88-2906, enacted by Ga. L. 1971, p. 438, § 1; Ga. L. 1991, p. 94, § 31.)

Law reviews. — For article, "Informed Consent: New Georgia Guidelines," discussing law of medical consent in Georgia, in light of *Young v. Yarn*, 136 Ga. App. 737, 222 S.E.2d 113 (1975), see 12 Ga. St. B.J. 197 (1976). For article, "Georgia's Medical Consent Law," see 21 Ga. St. B.J. 138 (1985). For article, "Doreika v. Blotner:

Affirming Ketchup against Judicial Mustard," see 60 Mercer L. Rev. 807 (2009).

For note, "Informed Confusion: The Doctrine of Informed Consent in Georgia," see 37 Ga. L. Rev. 1129 (2003).

For comment on *Young v. Yarn*, 136 Ga. App. 737, 222 S.E.2d 113 (1975), see 28 Mercer L. Rev. 377 (1976).

JUDICIAL DECISIONS

Physician's duty to disclose risks. — To the extent there is a duty in Georgia pursuant to O.C.G.A. § 31-9-6 to disclose risks associated with a procedure performed by a doctor, that duty rests squarely upon the doctor. *Butler v. South Fulton Medical Ctr., Inc.*, 215 Ga. App. 809, 452 S.E.2d 768 (1994).

Failure to disclose material facts. — Consent based upon failure to disclose material facts which a patient has a right to know is not valid and cannot satisfy subsection (d) of O.C.G.A. § 31-9-6. *Gillis v. Cardio TVP Surgical Assocs., P.C.*, 239 Ga. App. 350, 520 S.E.2d 767 (1999).

Though the doctor never informed the patient that steroid injections were an alternative to surgery, there was no evidence that this omission was fraudulent; thus, the patient was bound by the consent form signed, and the trial court correctly directed a verdict on the patient's battery claim. *Bowling v. Foster*, 254 Ga. App. 374, 562 S.E.2d 776 (2002).

Physician's duty of disclosure does not include disclosure of risks of treatment. *McMullen v. Vaughan*, 138 Ga. App. 718, 227 S.E.2d 440 (1976).

No requirement of disclosure for risks of treatment. — Requirement of disclosure in general terms, the treatment or terms of treatment, cannot be interpreted as including a requirement for disclosure of risks of treatment. *Young v. Yarn*, 136 Ga. App. 737, 222 S.E.2d 113 (1975); *Simpson v. Dickson*, 167 Ga. App. 344, 306 S.E.2d 404 (1983).

While attending physician is required to inform patient of general terms of treatment, this duty does not require disclosure of risks of treatment. *Fox v. Cohen*, 160 Ga. App. 270, 287 S.E.2d 272 (1981).

Physician must inform the patient of the general terms of treatment. This duty does not include a disclosure of "risks of treatment." *Robinson v. Parrish*, 251 Ga. 496, 306 S.E.2d 922 (1983).

Physician must inform a patient of the general terms of treatment, but a disclosure of the "risks of treatment" need not be given. *Sikorski v. Bell*, 167 Ga. App. 803, 307 S.E.2d 701 (1983).

Informed consent doctrine is not a viable principle of law in this state. *McMullen v. Vaughan*, 138 Ga. App. 718, 227 S.E.2d 440 (1976).

Traditional doctrine of informed consent has been specifically rejected and whatever information must be disclosed as to general course of treatment does not include legally specified risks. *Parr v. Palmyra Park Hosp.*, 139 Ga. App. 457, 228 S.E.2d 596 (1976).

Disclosure of general course of treatment to patient precludes any action based on lack of consent to treatment undertaken. *Holbrook v. Schatten*, 165 Ga. App. 217, 299 S.E.2d 128 (1983).

Since appellant signed a consent form authorizing surgery, and the record clearly established that appellant understood the general course of proposed treatment, the appellant was precluded from

maintaining an action alleging that defendant/physician breached the physician's duty in failing to warn of risks of treatment or that appellant's consent was thereby rendered invalid absent a showing of fraudulent misrepresentations of material fact. *Holbrook v. Schatten*, 165 Ga. App. 217, 299 S.E.2d 128 (1983).

No action for failure to warn of risks. — As duty under O.C.G.A. § 31-9-6 does not include a disclosure of risks of treatment, plaintiff-patient cannot sustain an action alleging that the defendant breached the defendant's duty in failing to warn of the risks of treatment or that the plaintiff's consent was thereby rendered invalid. *Blount v. Moore*, 159 Ga. App. 80, 282 S.E.2d 720 (1981).

Physician must respond to questions truthfully. — When the doctor responds to a specific question posed by a patient concerning the risks of the contemplated treatment, a duty arises to speak truthfully. *Spikes v. Heath*, 175 Ga. App. 187, 332 S.E.2d 889 (1985); *Smith v. Wilfong*, 218 Ga. App. 503, 462 S.E.2d 163 (1995); *Campbell v. Breedlove*, 244 Ga. App. 819, 535 S.E.2d 308 (2000).

When there is no evidence of fraudulent misrepresentations by a doctor in obtaining the consent of a patient for a laparoscopy and the evidence is undisputed that a dilation and curettage surgical procedure is often performed as a preliminary to a laparoscopy, the consent of the patient to both operations is conclusively presumed to be a valid consent. *Cole v. Jordan*, 161 Ga. App. 409, 288 S.E.2d 260 (1982).

Good faith in accepting authority to consent held question of fact. — Question of fact precluding summary judgment existed as to whether physician acted in good faith when accepting the authority of county Department of Family and Children Services to consent to heart catheter procedure of child after hearing father's objection to procedure. *Bendiburg v. Dempsey*, 707 F. Supp. 1318 (N.D. Ga. 1989), modified on other grounds, 909 F.2d 463 (11th Cir. 1990), cert. denied, 500 U.S. 932, 111 S. Ct. 2053, 114 L. Ed. 2d 459 (1991).

Presumption of valid consent is created when such consent is in writ-

ing. *Fox v. Cohen*, 160 Ga. App. 270, 287 S.E.2d 272 (1981).

Effect of inadequacy of consent form when patient knew general course of treatment. — If the consent form is inadequate, or if there is no written consent shown, summary judgment for physician may be obtained by establishing that plaintiff-patient knew, from any source, the general course of treatment to be undertaken. *Parr v. Palmyra Park Hosp.*, 139 Ga. App. 457, 228 S.E.2d 596 (1976).

Ambiguous terms in consent form construed against physicians. — When language in a consent form was ambiguous as to whether consent was given only to additional procedures which were both necessary and appropriate or which were either necessary or appropriate, and, whether if two different classes of additional procedures existed, within which class the procedure performed on plaintiff existed, because of the inequality of the bargaining position between defendant physicians and plaintiff, the ambiguity was construed against the defendants as encompassing only additional procedures which were both necessary and appropriate when rendered. *Harris v. Tatum*, 216 Ga. App. 607, 455 S.E.2d 124 (1995).

Doctrine of res ipsa loquitur inapplicable in malpractice suits. *Young v. Yarn*, 136 Ga. App. 737, 222 S.E.2d 113 (1975).

Consent to "excision biopsy" of lesion. — Patient's consent to a general course of treatment does not preclude an action for battery for the treatment actually undertaken. Specifically, pursuant to the terms of the consent form at issue, the patient's consent to an "excision biopsy" of a lesion on the patient's face did not grant the doctor general authority for any other surgical treatment of the lesion. *Johnson v. Srivastava*, 199 Ga. App. 696, 405 S.E.2d 725 (1991).

Alteration of medical records after surgery. — Even if evidence existed that a doctor altered medical records pertaining to a surgical procedure after the procedure was completed, that evidence could not support a claim that the patient was fraudulently induced to sign the consent

form before the surgery. *Long v. Natarajan*, 291 Ga. App. 814, 662 S.E.2d 876 (2008).

Notice of use of physician's assistant. — Although O.C.G.A. § 43-34-106 does not require a physician to include notice of the use of a physician's assistant on a surgical consent form, it is not unreasonable to expect that this type of information would be included. *Gillis v. Cardio TVP Surgical Assocs., P.C.*, 239 Ga. App. 350, 520 S.E.2d 767 (1999).

Motion for summary judgment. — Court denied a patient's motion for reconsideration of the denial of a motion for summary judgment as to a battery claim that the patient asserted against a doctor because, by the patient's own admission,

the evidence that the patient asserted upon reconsideration, as well as the patient's argument that under O.C.G.A. § 31-9-6(d) the patient could not consent to an unlawful surgery, could and should have been asserted in the patient's summary judgment motion. *Otero v. Vito*, 144 Fed. Appx. 762 (M.D. Ga. Nov. 13, 2006).

Cited in *Kenney v. Piedmont Hosp.*, 136 Ga. App. 660, 222 S.E.2d 162 (1975); *Winfrey v. Citizens & S. Nat'l Bank*, 149 Ga. App. 488, 254 S.E.2d 725 (1979); *Butler v. Brown*, 162 Ga. App. 376, 290 S.E.2d 293 (1982); *Hyles v. Cockrill*, 169 Ga. App. 132, 312 S.E.2d 124 (1983); *Verre v. Allen*, 175 Ga. App. 749, 334 S.E.2d 350 (1985); *Anglin v. Grisamore*, 192 Ga. App. 704, 386 S.E.2d 52 (1989).

RESEARCH REFERENCES

Am. Jur. 2d. — 59 Am. Jur. 2d, Parent and Child, § 71.

C.J.S. — 67A C.J.S., Parent and Child, §§ 38, 40, 41, 46 et seq.

ALR. — Mental competency of patient to consent to surgical operation or medical treatment, 25 ALR3d 1439.

Necessity and sufficiency of expert evidence to establish existence and extent of physician's duty to inform patient of risks of proposed treatment, 52 ALR3d 1084.

Malpractice: physician's duty to inform patient of nature and hazards of radiation or x-ray treatments under the doctrine of informed consent, 69 ALR3d 1223.

Modern status of views as to general measure of physician's duty to inform patient of risks of proposed treatment, 88 ALR3d 1008.

Malpractice: questions of consent in connection with treatment of genital or urinary organs, 89 ALR3d 32.

Malpractice: physician's duty, under informed consent doctrine, to obtain patient's consent to treatment in pregnancy or childbirth cases, 89 ALR4th 799.

Liability of dentist for extraction of teeth — Lack of informed consent, 125 ALR5th 403.

31-9-6.1. Disclosure of certain information to persons undergoing certain surgical or diagnostic procedures; failure to comply; exceptions; regulations establishing standards for implementation.

(a) Except as otherwise provided in this Code section, any person who undergoes any surgical procedure under general anesthesia, spinal anesthesia, or major regional anesthesia or any person who undergoes an amniocentesis diagnostic procedure or a diagnostic procedure which involves the intravenous or intraductal injection of a contrast material must consent to such procedure and shall be informed in general terms of the following:

- (1) A diagnosis of the patient's condition requiring such proposed surgical or diagnostic procedure;

(2) The nature and purpose of such proposed surgical or diagnostic procedure;

(3) The material risks generally recognized and accepted by reasonably prudent physicians of infection, allergic reaction, severe loss of blood, loss or loss of function of any limb or organ, paralysis or partial paralysis, paraplegia or quadriplegia, disfiguring scar, brain damage, cardiac arrest, or death involved in such proposed surgical or diagnostic procedure which, if disclosed to a reasonably prudent person in the patient's position, could reasonably be expected to cause such prudent person to decline such proposed surgical or diagnostic procedure on the basis of the material risk of injury that could result from such proposed surgical or diagnostic procedure;

(4) The likelihood of success of such proposed surgical or diagnostic procedure;

(5) The practical alternatives to such proposed surgical or diagnostic procedure which are generally recognized and accepted by reasonably prudent physicians; and

(6) The prognosis of the patient's condition if such proposed surgical or diagnostic procedure is rejected.

(b)(1) If a consent to a surgical or diagnostic procedure is required to be obtained under this Code section and such consent is not obtained in writing in accordance with the requirements of this Code section, then no presumption shall arise as to the validity of such consent.

(2) If a consent to a diagnostic or surgical procedure is required to be obtained under this Code section and such consent discloses in general terms the information required in subsection (a) of this Code section, is duly evidenced in writing, and is signed by the patient or other person or persons authorized to consent pursuant to the terms of this chapter, then such consent shall be rebuttably presumed to be a valid consent.

(c) In situations where a consent to a surgical or diagnostic procedure is required under this Code section, it shall be the responsibility of the responsible physician to ensure that the information required by subsection (a) of this Code section is disclosed and that the consent provided for in this Code section is obtained. The information provided for in this Code section may be disclosed through the use of video tapes, audio tapes, pamphlets, booklets, or other means of communication or through conversations with nurses, physician assistants, trained counselors, patient educators, or other similar persons known by the responsible physician to be knowledgeable and capable of communicating such information; provided, however, that for the purposes of this Code section only, if any employee of a hospital or ambulatory surgical

treatment center participates in any such conversations at the request of the responsible physician, such employee shall be considered for such purposes to be solely the agent of the responsible physician.

(d) A failure to comply with the requirements of this Code section shall not constitute a separate cause of action but may give rise to an action for medical malpractice as defined in Code Section 9-3-70 and as governed by other provisions of this Code relating to such actions; and any such action shall be brought against the responsible physician or any hospital, ambulatory surgical treatment center, professional corporation, or partnership of which the responsible physician is an employee or partner and which is responsible for such physician's acts, or both, upon a showing:

(1) That the patient suffered an injury which was proximately caused by the surgical or diagnostic procedure;

(2) That information concerning the injury suffered was not disclosed as required by this Code section; and

(3) That a reasonably prudent patient would have refused the surgical or diagnostic procedure or would have chosen a practical alternative to such proposed surgical or diagnostic procedure if such information had been disclosed;

provided, however, that, as to an allegation of negligence for failure to comply with the requirements of this Code section, the expert's affidavit required by Code Section 9-11-9.1 shall set forth that the patient suffered an injury which was proximately caused by the surgical or diagnostic procedure and that such injury was a material risk required to be disclosed under this Code section.

(e) The disclosure of information and the consent provided for in this Code section shall not be required if:

(1) An emergency exists as defined in Code Section 31-9-3;

(2) The surgical or diagnostic procedure is generally recognized by reasonably prudent physicians to be a procedure which does not involve a material risk to the patient involved;

(3) A patient or other person or persons authorized to give consent pursuant to this chapter make a request in writing that the information provided for in this Code section not be disclosed;

(4) A prior consent, within 30 days of the surgical or diagnostic procedure, complying with the requirements of this Code section to the surgical or diagnostic procedure has been obtained as a part of a course of treatment for the patient's condition; provided, however, that if such consent is obtained in conjunction with the admission of the patient to a hospital for the performance of such procedure, the

consent shall be valid for a period of 30 days from the date of admission or for the period of time the person is confined in the hospital for that purpose, whichever is greater; or

(5) The surgical or diagnostic procedure was unforeseen or was not known to be needed at the time consent was obtained, and the patient has consented to allow the responsible physician to make the decision concerning such procedure.

(f) A prior consent to surgical or diagnostic procedures obtained pursuant to the provisions of this Code section shall be deemed to be valid consent for the responsible physician and all medical personnel under the direct supervision and control of the responsible physician in the performance of such surgical or diagnostic procedure and for all other medical personnel otherwise involved in the course of treatment of the patient's condition.

(g) The Georgia Composite Medical Board shall be required to adopt and have the authority to promulgate rules and regulations governing and establishing the standards necessary to implement this chapter specifically including but not limited to the disciplining of a physician who fails to comply with this Code section.

(h) As used in this Code section, the term "responsible physician" means the physician who performs the procedure or the physician under whose direct orders the procedure is performed by a nonphysician. (Code 1981, § 31-9-6.1, enacted by Ga. L. 1988, p. 1443, § 1; Ga. L. 1989, p. 178, § 1; Ga. L. 1990, p. 1400, § 1; Ga. L. 2001, p. 4, § 31; Ga. L. 2009, p. 859, §§ 2, 3/HB 509.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1988, a comma was inserted following "spinal anesthesia" in the introductory paragraph of subsection (a).

Pursuant to Code Section 28-9-5, in 1990, "that" was deleted following "showing" at the end of the introductory language in subsection (d).

Editor's notes. — Ga. L. 1988, p. 1443, § 3, not codified by the General Assembly, provides: "This Act shall become effective on January 1, 1989, and shall apply to all such surgical or diagnostic procedures performed on or after January 1, 1989."

Law reviews. — For annual survey on law of torts, see 42 Mercer L. Rev. 431 (1990). For article, "Albany Urology Clinic, P.C. v. Cleveland: Why You Should Always Ask Your Urologist if He Is a

Cocaine Addict," see 52 Mercer L. Rev. 1159 (2001). For article, "Doreika v. Blotner: Affirming Ketchup against Judicial Mustard," see 60 Mercer L. Rev. 807 (2009). For article, "Eleventh Circuit Survey: January 1, 2008 — December 31, 2008: Casenote: Shots, Shoes, and Self-Representation: Indiana v. Edwards and the New Limitation on the Sixth Amendment Right of Self-Representation," see 60 Mercer L. Rev. 1509 (2009). For annual survey of law on appellate practice and procedure, see 62 Mercer L. Rev. 25 (2010). For annual survey of law on trial practice and procedure, see 62 Mercer L. Rev. 339 (2010).

For note, "Informed Confusion: The Doctrine of Informed Consent in Georgia," see 37 Ga. L. Rev. 1129 (2003).

JUDICIAL DECISIONS

Requisite disclosure defined. — Georgia's informed consent law does not require physicians to inform patients of all alternatives to surgery; it requires disclosure of only those alternatives that are "generally recognized and accepted by reasonably prudent physicians." Accordingly, a doctor was not liable for failing to inform a heart patient of a relatively unknown therapy treatment as an alternative to open heart surgery. *Moore v. Baker*, 989 F.2d 1129 (11th Cir. 1993).

Chiropractic treatment is not included among the matters for which informed consent is required by O.C.G.A. § 31-9-6.1. *Blotner v. Doreika*, 285 Ga. 481, 678 S.E.2d 80 (2009).

Physician's duty to disclose risks. — To the extent there is a duty in Georgia pursuant to O.C.G.A. § 31-9-6.1 to disclose risks associated with a procedure performed by a doctor, that duty rests squarely upon the doctor. *Butler v. South Fulton Medical Ctr., Inc.*, 215 Ga. App. 809, 452 S.E.2d 768 (1994).

Physician was not under an affirmative obligation, either under statute or common law, to disclose drug use to patients prior to rendering services, and a physician's failure to make such disclosure could not be the basis for an independent cause of action against the physician. *Albany Urology Clinic, P.C. v. Cleveland*, 272 Ga. 296, 528 S.E.2d 777 (2000), reversing *Cleveland v. Albany Urology Clinic*, 235 Ga. App. 838, 509 S.E.2d 664 (1998).

Statute of repose. — Five year statute of repose contained in O.C.G.A. § 9-3-71 applied to a battery claim based on the defendant's alleged failure to obtain the plaintiff's consent to the injection pursuant to O.C.G.A. § 31-9-6.1. *Blackwell v. Goodwin*, 236 Ga. App. 861, 513 S.E.2d 542 (1999).

Action not within scope of Code section. — Georgia's implied consent statute, O.C.G.A. § 31-9-6.1(d), did not require a patient to file an expert affidavit with a complaint for fraud, misrepresentation, and deceit against a physician that alleged that the physician knowingly and intentionally misrepresented the nature and quality of a local hospital's equip-

ment; the patient's allegations fell outside the scope of § 31-9-6.1 because the claim that the physician affirmatively and intentionally misled the patient with respect to the local hospital's equipment for the purpose of inducing the patient to have heart surgery performed at the local hospital alleged intentional misrepresentation and not merely a failure to disclose a known risk. *Murrah v. Fender*, 282 Ga. App. 634, 639 S.E.2d 595 (2006).

Cause of action. — O.C.G.A. § 31-9-6.1 does not itself provide a cause of action but imposes disclosure requirements upon physicians before performing certain procedures. *Campbell v. United States*, 795 F. Supp. 1127 (N.D. Ga. 1991), aff'd, 962 F.2d 1579 (11th Cir. 1992), cert. denied, 507 U.S. 909, 113 S. Ct. 1254, 122 L. Ed. 2d 653 (1993).

While breach of the statute's requirements may support a cause of action under the medical malpractice statutes, the statute presupposes that one of the identified procedures was performed. Thus, there is no cause of action if none of the named procedures were performed. *Campbell v. United States*, 795 F. Supp. 1127 (N.D. Ga. 1991), aff'd, 962 F.2d 1579 (11th Cir. 1992), cert. denied, 507 U.S. 909, 113 S. Ct. 1254, 122 L. Ed. 2d 653 (1993).

Even if the informed consent statute applied to the patient's action against the dentist for damage the dentist allegedly caused when the dentist gave the patient an injection to numb pain, as the patient requested, the statute explicitly provided that violation of the statute did not give rise to a separate cause of action, but instead may give rise to a medical malpractice action; accordingly, the trial court did not err in granting partial summary judgment to the dentist on the patient's allegation that the informed consent statute was violated. Additionally, the injection was neither a surgical procedure nor one of the diagnostic procedures specified in the statute regarding the situations in which a healthcare provider had to obtain a patient's informed consent. *Pope v. Davis*, 261 Ga. App. 308, 582 S.E.2d 460 (2003).

Personal reasons for limitations on medical practice not subject to mandatory disclosure. — In a medical malpractice suit, a breach of fiduciary duty claim based on a doctor's failure to disclose why the doctor no longer delivered babies failed as a matter of law because the personal reasons why a doctor limited the doctor's practice area was not among the mandatory disclosures under the informed consent statute, O.C.G.A. § 31-9-6.1(a). *Hooks v. Humphries*, 303 Ga. App. 264, 692 S.E.2d 845 (2010).

Procedures not within scope of section. — O.C.G.A. § 31-9-6.1 did not apply to a thoracic sympathetic neurolytic block to relieve pain. *Butler v. South Fulton Medical Ctr., Inc.*, 215 Ga. App. 809, 452 S.E.2d 768 (1994).

Summary judgment was properly granted dismissing a patient's claim under O.C.G.A. § 31-9-6.1, seeking to hold doctors liable for failure to obtain informed consent to the administration of anesthesia during cataract surgery because the surgery was not performed under any of the three types of anesthesia specified. *Murphy v. Berger*, 273 Ga. App. 798, 616 S.E.2d 132 (2005).

Because Georgia did not recognize a common law action for lack of informed consent, and because neither the mouth nor the jaw was considered a major region under O.C.G.A. § 31-9-6.1(a), the trial court did not err in granting partial summary judgment to a dentist on a patient's

informed consent claim. *Roberts v. Connell*, 312 Ga. App. 515, 718 S.E.2d 862 (2011).

Consent form created a rebuttable presumption that the plaintiff gave consent to the defendant doctor to perform an esophageal dilation because the procedure was not known to be needed at the time consent was obtained. *Tuten v. Costrini*, 238 Ga. App. 350, 518 S.E.2d 751 (1999).

Consent valid for medical personnel and physicians. — A valid consent obtained from plaintiff prior to plaintiff's surgery constituted a valid consent both as to the responsible physician and for all medical personnel, whether or not named, involved in the performance of the surgery under the responsible physician's direct supervision and control. *Cardio TVP Surgical Assocs. v. Gillis*, 272 Ga. 404, 528 S.E.2d 785 (2000), reversing *Gillis v. Cardio TVP Surgical Assocs., P.C.*, 239 Ga. App. 350, 520 S.E.2d 767 (1999).

Nothing in O.C.G.A. § 31-9-6.1 renders a consent invalid when the names of the nonphysicians participating in the surgical procedure are not included in the consent form. *Cardio TVP Surgical Assocs. v. Gillis*, 272 Ga. 404, 528 S.E.2d 785 (2000), reversing *Gillis v. Cardio TVP Surgical Assocs., P.C.*, 239 Ga. App. 350, 520 S.E.2d 767 (1999).

Cited in *Albany Urology Clinic, P.C. v. Cleveland*, 272 Ga. 296, 528 S.E.2d 777 (2000); *Bethea v. Coralli*, 248 Ga. App. 853, 546 S.E.2d 542 (2001).

RESEARCH REFERENCES

ALR. — Propriety of "hindsight" charge in medical malpractice actions, 124 ALR5th 623.

Liability of dentist for extraction of teeth — Lack of informed consent, 125 ALR5th 403.

31-9-7. Right of persons who are at least 18 years of age to refuse to consent to treatment.

Nothing contained in this chapter shall be construed to abridge any right of a person 18 years of age or over to refuse to consent to medical and surgical treatment as to his own person. (Code 1933, § 88-2907, enacted by Ga. L. 1971, p. 438, § 1.)

JUDICIAL DECISIONS

Lucid adult has right to withhold consent to suggested and recommended medical procedures and, absent such consent, a physician owes no further duty to the patient in that regard other than to honor the decision. *Kirby v. Spivey*, 167 Ga. App. 751, 307 S.E.2d 538 (1983).

Minors may not refuse unwanted

care. — Georgia provides no “mature minor” exception to the state’s general rule that only adults may refuse unwanted medical care. *Novak v. Cobb County-Kennestone Hosp. Auth.*, 849 F. Supp. 1559 (N.D. Ga. 1994), *aff’d*, 74 F.3d 1173 (11th Cir. 1996).

RESEARCH REFERENCES

Am. Jur. 2d. — 59 Am. Jur. 2d, Parent and Child, § 71.

C.J.S. — 67A C.J.S., Parent and Child, § 38, 40, 41, 46 et seq.

ALR. — Consent as condition of right to perform surgical operation, 76 ALR 562; 139 ALR 1370.

Patient’s right to refuse treatment allegedly necessary to sustain life, 93 ALR3d 67.

Judicial power to order discontinuance of life-sustaining treatment, 48 ALR4th 67.

Power of court or other public agency to order medical treatment over parental religious objections for child whose life is not immediately endangered, 21 ALR5th 248.

CHAPTER 9A

WOMAN'S RIGHT TO KNOW

Sec.

31-9A-1. Short title.

31-9A-2. (For effective date, see note.)
Definitions.

31-9A-3. Voluntary and informed consent to abortion; availability of ultrasound.

31-9A-4. Information to be made available by the Department of Public Health; format requirements; availability; requirements for website.

Sec.

31-9A-5. Requirements in case of medical emergency.

31-9A-6. Reporting requirements.

31-9A-6.1. (For effective date, see note.)
Civil and professional penalties for violations; prerequisites for seeking penalties.

31-9A-7. Preservation of patient anonymity in civil proceedings.

31-9A-8. Severability.

Cross references. — Abortions not to be performed by physician assistants, § 43-34-110.

Law reviews. — For article on 2005 enactment of this chapter, see 22 Ga. St. U.L. Rev. 147 (2005).

RESEARCH REFERENCES

Am. Jur. 2d. — 1 Am. Jur. 2d, Abortion and Birth Control, § 15 et seq.

C.J.S. — 1 C.J.S., Abortion and Birth Control, §§ 1 et seq., 11 et seq.

31-9A-1. Short title.

This chapter shall be known and may be cited as the “Woman’s Right to Know Act.” (Code 1981, § 31-9A-1, enacted by Ga. L. 2005, p. 1450, § 6/HB 197.)

RESEARCH REFERENCES

ALR. — Women’s reproductive rights concerning abortion, and governmental

regulation thereof — Supreme Court cases, 20 ALR Fed. 2d 1.

31-9A-2. (For effective date, see note.) Definitions.

As used in this chapter, the term:

(1) “Abortion” means the use or prescription of any instrument, medicine, drug, or any other substance or device with the intent to terminate the pregnancy of a female known to be pregnant. The term “abortion” shall not include the use or prescription of any instrument, medicine, drug, or any other substance or device employed solely to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove a dead unborn child who died

as the result of a spontaneous abortion. The term “abortion” also shall not include the prescription or use of contraceptives.

(2) (For effective date, see note.) “Medical emergency” means any condition which, in reasonable medical judgment, so complicates the medical condition of a pregnant female as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial or irreversible impairment of a major bodily function of the pregnant woman or death of the unborn child. No such condition shall be deemed to exist if it is based on a diagnosis or claim of a mental or emotional condition of the pregnant woman or that the pregnant woman will purposefully engage in conduct which she intends to result in her death or in substantial and irreversible physical impairment of a major bodily function.

(3) “Physician” means a person licensed to practice medicine under Article 2 of Chapter 34 of Title 43.

(4) “Probable gestational age of the unborn child” means the physician’s best professional estimate of the probable gestational age of the unborn child at the time an abortion is to be performed.

(5) “Qualified agent” means the agent of the physician who is a patient educator, licensed psychologist, licensed social worker, licensed professional counselor, licensed physician assistant, registered nurse, or physician.

(6) “Secure Internet website” means a website that is safeguarded from having its content altered other than by the commissioner of public health.

(7) “Unborn child” or “fetus” means a member of the species *homo sapiens* from fertilization until birth. (Code 1981, § 31-9A-2, enacted by Ga. L. 2005, p. 1450, § 6/HB 197; Ga. L. 2009, p. 453, § 1-6/HB 228; Ga. L. 2009, p. 859, § 3/HB 509; Ga. L. 2011, p. 705, § 6-5/HB 214; Ga. L. 2012, p. 575, § 5/HB 954.)

Delayed effective date. — Paragraph (2), as set out above, becomes effective January 1, 2013. For version of paragraph (2) in effect until January 1, 2013, see the 2012 amendment note.

The 2011 amendment, effective July 1, 2011, substituted “commissioner of public health” for “commissioner of community health” in paragraph (6).

The 2012 amendment, effective May 1, 2012, for purposes of promulgating rules and regulations and effective for all other purposes on January 1, 2013, sub-

stituted the present provisions of paragraph (2) for the former provisions, which read: “‘Medical emergency’ means any condition which, on the basis of the physician’s good faith clinical judgment, so complicates the medical condition of a pregnant female as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial or irreversible impairment of a major bodily function.”

Editor’s notes. — Ga. L. 2012, p. 575,

§ 1/HB 954, not codified by the General Assembly, provides that: "The General Assembly makes the following findings:

"(1) At least by 20 weeks after fertilization there is substantial evidence that an unborn child has the physical structures necessary to experience pain;

"(2) There is substantial evidence that, by 20 weeks after fertilization, unborn children seek to evade certain stimuli in a manner which in an infant or an adult would be interpreted as a response to pain;

"(3) Anesthesia is routinely administered to unborn children who have developed 20 weeks or more past fertilization who undergo prenatal surgery;

"(4) Even before 20 weeks after fertilization, unborn children have been observed

to exhibit hormonal stress responses to painful stimuli. Such responses were reduced when pain medication was administered directly to such unborn children;

"(4.1) Probable gestational age is an estimate made to assume the closest time to which the fertilization of a human ovum occurred and does not purport to be an exact diagnosis of when such fertilization occurred; and

"(5) It is the purpose of the State of Georgia to assert a compelling state interest in protecting the lives of unborn children from the stage at which substantial medical evidence indicates that they are capable of feeling pain."

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

31-9A-3. Voluntary and informed consent to abortion; availability of ultrasound.

No abortion shall be performed in this state except with the voluntary and informed consent of the female upon whom the abortion is to be performed. Notwithstanding any provision of law to the contrary, except in the case of a medical emergency, consent to an abortion is voluntary and informed if and only if:

(1) The female is told the following, by telephone or in person, by the physician who is to perform the abortion, by a qualified agent of the physician who is to perform the abortion, by a qualified agent of a referring physician, or by a referring physician, at least 24 hours before the abortion:

(A) The particular medical risks to the individual patient associated with the particular abortion procedure to be employed, when medically accurate;

(B) The probable gestational age of the unborn child at the time the abortion would be performed; and

(C) The medical risks associated with carrying the unborn child to term.

The information required by this paragraph may be provided by telephone without conducting a physical examination or tests of the patient, in which case the information required to be provided may be based on facts supplied to the physician by the female and whatever other relevant information is reasonably available to the physician. Such information may not be provided by a tape recording but must be provided during a consultation in which the physician or a

qualified agent of the physician is able to ask questions of the female and the female is able to ask questions of the physician or the physician's qualified agent. If in the medical judgment of the physician any physical examination, tests, or other information subsequently provided to the physician requires a revision of the information previously supplied to the patient, that revised information shall be communicated to the patient prior to the performance of the abortion. Nothing in this Code section may be construed to preclude provision of required information in a language understood by the patient through a translator;

(2) The female is informed, by telephone or in person, by the physician who is to perform the abortion, by a referring physician, or by a qualified agent of the physician who is to perform the abortion at least 24 hours before the abortion:

(A) That medical assistance benefits may be available for prenatal care, childbirth, and neonatal care;

(B) That the father will be liable pursuant to subsection (a) of Code Section 19-7-49 to assist in the support of her child;

(C) How to obtain a list of health care providers, facilities, and clinics that offer to perform ultrasounds free of charge; such list shall be arranged geographically and shall include the name, address, hours of operation, and telephone number of each listed entity; and

(D) That she has the right to review the printed materials described in Code Section 31-9A-4 and that these materials are available on a state sponsored website at a stated website address. The physician or the physician's qualified agent shall orally inform the female that materials have been provided by the State of Georgia and that they describe the unborn child, list agencies that offer alternatives to abortion, and contain information on fetal pain. If the female chooses to view the materials other than on the website, they shall either be given to her at least 24 hours before the abortion or mailed to her at least 72 hours before the abortion by certified mail, restricted delivery to addressee.

The information required by this paragraph may be provided by a tape recording if provision is made to record or otherwise register specifically whether the female does or does not choose to review the printed materials other than on the website;

(3) The female certifies in writing, prior to the abortion, that the information described in paragraphs (1) and (2) of this Code section has been furnished her and that she has been informed of her opportunity to review the information referred to in subparagraph (D) of paragraph (2) of this Code section;

(4) For all cases in which an ultrasound is performed prior to conducting an abortion or a pre-abortion screen:

(A) The woman shall at the conclusion of the ultrasound be offered the opportunity to view the fetal image and hear the fetal heartbeat. The active ultrasound image shall be of a quality consistent with standard medical practice in the community, contain the dimensions of the unborn child, and accurately portray the presence of external members and internal organs, including but not limited to the heartbeat, if present or viewable, of the unborn child. The auscultation of fetal heart tone shall be of a quality consistent with standard medical practice in the community; and

(B) At the conclusion of these actions and prior to the abortion, the female certifies in writing that:

(i) She was provided the opportunity described in subparagraph (A) of this paragraph;

(ii) Whether or not she elected to view the sonogram; and

(iii) Whether or not she elected to listen to the fetal heartbeat, if present; and

(5) Prior to the performance of the abortion, the physician who is to perform the abortion or the physician's qualified agent receives a copy of the written certifications prescribed by paragraphs (3) and (4) of this Code section and retains them on file with the female's medical record for at least three years following the date of receipt. (Code 1981, § 31-9A-3, enacted by Ga. L. 2005, p. 1450, § 6/HB 197; Ga. L. 2007, p. 299, § 3/HB 147.)

Editor's notes. — Ga. L. 2007, p. 299, § 1/HB 147, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Woman's Ultrasound Right to Know Act.'"

Ga. L. 2007, p. 299, § 2/HB 147, not codified by the General Assembly, provides: "(a) The General Assembly finds that:

"(1) It is essential to the psychological and physical well-being of a woman considering an abortion that she receive complete and accurate information on the reality and status of her pregnancy and of her unborn child;

"(2) The decision to abort 'is an important and often a stressful one, and it is desirable and imperative that it be made with full knowledge of its nature and consequences.' *Planned Parenthood v. Danforth*, 428 U.S. 52, 67 (1976); and

"(3) The knowledgeable exercise of a woman's decision to have an abortion depends on the extent to which the woman receives sufficient information to make an informed choice between two alternatives: giving birth or having an abortion.

"(b) Based on the findings in subsection (a) of this section, it is the purpose of this Act to:

"(1) Ensure that every woman considering an abortion receive complete information on the reality and status of her pregnancy and of her unborn child and that every woman submitting to an abortion do so only after giving her voluntary and informed consent to the abortion procedure;

"(2) Protect unborn children from a woman's uninformed decision to have an abortion;

"(3) Reduce 'the risk that a woman may

elect an abortion, only to discover later, with devastating psychological consequences, that her decision was not fully informed' *Planned Parenthood v. Casey*, 505 U.S. 833, 882 (1992); and

"(4) Adopt the construction of the term 'medical emergency' accepted by the United States Supreme Court in *Planned Parenthood v. Casey*, 505 U.S. 833 (1992)."

Ga. L. 2007, p. 299, § 7/HB 147, not codified by the General Assembly, provides: "Nothing in this Act shall be construed as creating or recognizing a right to

abortion. It is not the intention of this Act to make lawful an abortion that is currently unlawful."

Ga. L. 2007, p. 299, § 8/HB 147, not codified by the General Assembly, provides for severability.

Law reviews. — For article, "Crimes and Offenses," see 27 Ga. St. U.L. Rev. 209 (2011).

For note on 2007 amendment of this Code section, see 24 Georgia St. U.L. Rev. 161 (2007).

31-9A-4. Information to be made available by the Department of Public Health; format requirements; availability; requirements for website.

(a) The Department of Public Health shall cause to be published in English and in each language which is the primary language of 2 percent or more of the state's population and shall cause to be available on the state website provided for in subsection (d) of this Code section the following printed materials in such a way as to ensure that the information is easily comprehensible:

(1) Geographically indexed materials designed to inform the female of public and private agencies and services available to assist a female through pregnancy, upon childbirth, and while the child is dependent, including adoption agencies, which shall include a comprehensive list of the agencies available, a description of the services they offer, and a description of the manner, including telephone numbers and website addresses, in which they might be contacted or, at the option of such department, printed materials including a toll-free, 24 hour telephone number which may be called to obtain, orally or by a tape recorded message tailored to the ZIP Code entered by the caller, such a list and description of agencies in the locality of the caller and of the services they offer;

(1.1) Geographically indexed materials designed to inform the female of public and private facilities and services available to assist a female with obtaining an ultrasound which shall include a comprehensive list of the facilities available, a description of the services they offer, and a description of the manner, including telephone numbers and website addresses, in which they might be contacted or, at the option of such department, printed materials including a toll-free, 24 hour telephone number which may be called to obtain, orally or by a tape recorded message tailored to the ZIP Code entered by the caller, such a list and description of facilities in the locality of the caller and of the services they offer;

(2) Materials designed to inform the female of the probable anatomical and physiological characteristics of the unborn child at two-week gestational increments from the time when a female can be known to be pregnant to full term, including any relevant information on the possibility of the unborn child's survival and pictures representing the development of unborn children at two-week gestational increments, provided that any such pictures must contain the dimensions of the fetus and must be factually accurate for the stage of pregnancy depicted. The materials shall be objective, nonjudgmental, and designed to convey only factually accurate scientific information about the unborn child at the various gestational ages. The material shall also contain objective information describing the methods of abortion procedures commonly employed, the medical risks commonly associated with each such procedure, the possible detrimental psychological effects of abortion, and the medical risks commonly associated with carrying a child to term; and

(3) Materials with the following statement concerning unborn children of 20 weeks' or more gestational age:

"By 20 weeks' gestation, the unborn child has the physical structures necessary to experience pain. There is evidence that by 20 weeks' gestation unborn children seek to evade certain stimuli in a manner which in an infant or an adult would be interpreted to be a response to pain. Anesthesia is routinely administered to unborn children who are 20 weeks' gestational age or older who undergo prenatal surgery."

The materials shall be objective, nonjudgmental, and designed to convey only accurate scientific information about the unborn child at the various gestational ages.

(b) The materials referred to in subsection (a) of this Code section shall be printed in a typeface large enough to be clearly legible. All pictures and print appearing on the website shall be clearly legible. All information and pictures shall be accessible with an industry standard browser, requiring no additional plug-ins.

(c) The materials required under this Code section shall be available at no cost from the Department of Public Health upon request and in a reasonably appropriate number to any person, facility, or hospital.

(d) The Department of Public Health shall develop and maintain a secure Internet website to provide the information described in this Code section. No information regarding who uses the website shall be collected or maintained. The Department of Public Health shall monitor the website on a weekly basis to prevent and correct tampering. (Code 1981, § 31-9A-4, enacted by Ga. L. 2005, p. 1450, § 6/HB 197; Ga. L. 2007, p. 299, § 4/HB 147; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214.)

The 2011 amendment, effective July 1, 2011, substituted “Department of Public Health” for “Department of Community Health” throughout this Code section.

Editor’s notes. — Ga. L. 2007, p. 299, § 1/HB 147, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘Woman’s Ultrasound Right to Know Act.’”

Ga. L. 2007, p. 299, § 2/HB 147, not codified by the General Assembly, provides: “(a) The General Assembly finds that:

“(1) It is essential to the psychological and physical well-being of a woman considering an abortion that she receive complete and accurate information on the reality and status of her pregnancy and of her unborn child;

“(2) The decision to abort ‘is an important and often a stressful one, and it is desirable and imperative that it be made with full knowledge of its nature and consequences.’ *Planned Parenthood v. Danforth*, 428 U.S. 52, 67 (1976); and

“(3) The knowledgeable exercise of a woman’s decision to have an abortion depends on the extent to which the woman receives sufficient information to make an informed choice between two alternatives: giving birth or having an abortion.

“(b) Based on the findings in subsection (a) of this section, it is the purpose of this Act to:

“(1) Ensure that every woman consid-

ering an abortion receive complete information on the reality and status of her pregnancy and of her unborn child and that every woman submitting to an abortion do so only after giving her voluntary and informed consent to the abortion procedure;

“(2) Protect unborn children from a woman’s uninformed decision to have an abortion;

“(3) Reduce ‘the risk that a woman may elect an abortion, only to discover later, with devastating psychological consequences, that her decision was not fully informed’ *Planned Parenthood v. Casey*, 505 U.S. 833, 882 (1992); and

“(4) Adopt the construction of the term ‘medical emergency’ accepted by the United States Supreme Court in *Planned Parenthood v. Casey*, 505 U.S. 833 (1992).”

Ga. L. 2007, p. 299, § 7/HB 147, not codified by the General Assembly, provides: “Nothing in this Act shall be construed as creating or recognizing a right to abortion. It is not the intention of this Act to make lawful an abortion that is currently unlawful.”

Ga. L. 2007, p. 299, § 8/HB 147, not codified by the General Assembly, provides for severability.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

For note on 2007 amendment of this Code section, see 24 Georgia St. U.L. Rev. 161 (2007).

31-9A-5. Requirements in case of medical emergency.

(a) When a medical emergency compels the performance of an abortion, the physician shall inform the female prior to the abortion, if medically reasonable and prudent, of the medical indications supporting the physician’s judgment that an abortion is medically necessary to avert her death or that a 24 hour delay will create serious risk of substantial or irreversible impairment of a major bodily function.

(b) Any physician who complies with subsection (a) of this Code section shall not be held civilly liable to a patient for failure to obtain informed consent to an abortion. (Code 1981, § 31-9A-5, enacted by Ga. L. 2005, p. 1450, § 6/HB 197.)

RESEARCH REFERENCES

Am. Jur. 2d. — 1 Am. Jur. 2d, Abortion and Birth Control, §§ 30, 36.

C.J.S. — 1 C.J.S., Abortion and Birth Control, § 8 et seq.

31-9A-6. Reporting requirements.

(a) The Department of Public Health shall prepare a reporting form for physicians performing abortions in a health facility licensed as an abortion facility by the Department of Community Health containing a reprint of this chapter and listing:

(1) The number of females to whom the physician provided the information described in paragraph (1) of Code Section 31-9A-3; of that number, the number to whom the information was provided by telephone and the number to whom the information was provided in person; and of each of those numbers, the number to whom the information was provided by a referring physician and the number to whom the information was provided by a physician who is to perform the abortion;

(2) The number of females to whom the physician or a qualified agent of the physician provided the information described in paragraph (2) of Code Section 31-9A-3; of that number, the number to whom the information was provided by telephone and the number to whom the information was provided in person; of each of those numbers, the number to whom the information was provided by a referring physician and the number to whom the information was provided by a physician who is to perform the abortion; and of each of those numbers, the number to whom the information was provided by the physician and the number to whom the information was provided by a qualified agent of the physician;

(3) The number of females who availed themselves of the opportunity to obtain a copy of the printed information described in Code Section 31-9A-4, other than on the website, and the number who did not; and of each of those numbers, the number who, to the best of the reporting physician's information and belief, went on to obtain the abortion; and

(4) The number of females who were provided the opportunity to view the fetal image and hear the fetal heartbeat; of that number, the number who elected to view the sonogram and the number who elected to listen to the fetal heartbeat, if present.

(b) The Department of Public Health shall ensure that copies of the reporting forms described in subsection (a) of this Code section are provided:

(1) Not later than September 7, 2005, to all health facilities licensed as an abortion facility by the Department of Community Health;

(2) To each physician licensed or who subsequently becomes licensed to practice in this state, at the same time as official notification to that physician that the physician is so licensed; and

(3) By December 1 of each year, other than the calendar year in which forms are distributed in accordance with paragraph (1) of this subsection, to all health facilities licensed as an abortion facility by the Department of Community Health.

(c) By February 28 of each year following a calendar year in any part of which this chapter was in effect, each physician who provided, or whose qualified agent provided, information to one or more females in accordance with Code Section 31-9A-3 during the previous calendar year shall submit to the Department of Public Health a copy of the form described in subsection (a) of this Code section with the requested data entered accurately and completely.

(d) Nothing in this Code section shall be construed to preclude the voluntary or required submission of other reports or forms regarding abortions.

(e) Reports that are not submitted within a grace period of 30 days following the due date shall be subject to a late fee of \$500.00 for that period and the same fee for each additional 30 day period or portion of a 30 day period the reports are overdue. Any physician required to submit a report in accordance with this Code section who submits an incomplete report or fails to submit a report for more than one year following the due date may, in an action brought by the Department of Public Health, be directed by a court of competent jurisdiction to submit a complete report within a period stated by court order or may be subject to sanctions for civil contempt.

(f) By June 30 of each year, the Department of Public Health shall issue a public report providing statistics for the previous calendar year compiled from all of the reports covering that year submitted in accordance with this Code section for each of the items listed in subsection (a) of this Code section. Each report shall also provide the statistics for all previous calendar years adjusted to reflect any additional information from late or corrected reports. The Department of Public Health shall ensure that none of the information included in the public reports could reasonably lead to the identification of any individual who provided information in accordance with Code Section 31-9A-3 or 31-9A-4.

(g) The Department of Public Health may, by regulation, alter the dates established by subsection (c) or (e) of this Code section or

paragraph (3) of subsection (b) of this Code section or may consolidate the forms or reports described in this Code section with other forms or reports for reasons including, but not limited to, achieving administrative convenience or fiscal savings or reducing the burden of reporting requirements, so long as reporting forms are sent to all facilities licensed as an abortion facility by the Department of Community Health at least once every year and the report described in subsection (f) of this Code section is issued at least once every year.

(h) The Department of Public Health shall ensure that the names and identities of the physicians filing reports under this chapter shall remain confidential. The names and identities of such physicians shall not be subject to Article 4 of Chapter 18 of Title 50. (Code 1981, § 31-9A-6, enacted by Ga. L. 2005, p. 1450, § 6/HB 197; Ga. L. 2007, p. 299, § 5/HB 147; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 5-14/HB 214.)

The 2011 amendment, effective July 1, 2011, substituted "Department of Public Health" for "Department of Community Health" at the beginning of subsection (a), in the introductory paragraph of subsection (b), in subsection (c), in the last sentence of subsection (e), twice in subsection (f), in the first sentence of subsection (g), and in the first sentence of subsection (h).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2005, "Not later than September 7, 2005," was substituted for "Within 120 days after this chapter first becomes effective," in paragraph (b)(1).

Editor's notes. — Ga. L. 2007, p. 299, § 1/HB 147, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Woman's Ultrasound Right to Know Act.'"

Ga. L. 2007, p. 299, § 2/HB 147, not codified by the General Assembly, provides: "(a) The General Assembly finds that:

"(1) It is essential to the psychological and physical well-being of a woman considering an abortion that she receive complete and accurate information on the reality and status of her pregnancy and of her unborn child;

"(2) The decision to abort 'is an important and often a stressful one, and it is desirable and imperative that it be made with full knowledge of its nature and consequences.' *Planned Parenthood v. Danforth*, 428 U.S. 52, 67 (1976); and

"(3) The knowledgeable exercise of a woman's decision to have an abortion depends on the extent to which the woman receives sufficient information to make an informed choice between two alternatives: giving birth or having an abortion.

"(b) Based on the findings in subsection (a) of this section, it is the purpose of this Act to:

"(1) Ensure that every woman considering an abortion receive complete information on the reality and status of her pregnancy and of her unborn child and that every woman submitting to an abortion do so only after giving her voluntary and informed consent to the abortion procedure;

"(2) Protect unborn children from a woman's uninformed decision to have an abortion;

"(3) Reduce 'the risk that a woman may elect an abortion, only to discover later, with devastating psychological consequences, that her decision was not fully informed' *Planned Parenthood v. Casey*, 505 U.S. 833, 882 (1992); and

"(4) Adopt the construction of the term 'medical emergency' accepted by the United States Supreme Court in *Planned Parenthood v. Casey*, 505 U.S. 833 (1992)."

Ga. L. 2007, p. 299, § 7/HB 147, not codified by the General Assembly, provides: "Nothing in this Act shall be construed as creating or recognizing a right to abortion. It is not the intention of this Act

to make lawful an abortion that is currently unlawful.”

Ga. L. 2007, p. 299, § 8/HB 147, not codified by the General Assembly, provides for severability.

Law reviews. — For article on the

2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

For note on 2007 amendment of this Code section, see 24 Georgia St. U.L. Rev. 161 (2007).

RESEARCH REFERENCES

Am. Jur. 2d. — 1 Am. Jur. 2d, Abortion and Birth Control, § 74 et seq.

31-9A-6.1. (For effective date, see note.) Civil and professional penalties for violations; prerequisites for seeking penalties.

(a) In addition to whatever remedies are available under the common or statutory law of this state, failure to comply with the requirements of this chapter shall be reported to the Georgia Composite Medical Board for disciplinary action.

(b) (For effective date, see note.) Any plaintiff seeking relief in the form of civil remedies for a violation of Code Section 31-9B-2 shall produce clear and convincing evidence that the physician determining the probable gestational age of the fetus or the physician whose determination was relied upon was negligent in his or her determination.

(c) (For effective date, see note.) Any female who solicits or conspires to solicit an abortion who makes a false representation of her age or name shall not have standing to state a claim against any party pursuant to this chapter or Chapter 9B of this title nor shall any agency or instrumentality of the state consider any action related to such claim. (Code 1981, § 31-9A-6.1, enacted by Ga. L. 2007, p. 299, § 6/HB 147; Ga. L. 2009, p. 859, § 2/HB 509; Ga. L. 2012, p. 575, § 4/HB 954.)

Delayed effective date. — This Code section, as set out above, becomes effective January 1, 2013. For version of this Code section in effect until January 1, 2013, see the 2012 amendment note.

The 2012 amendment, effective May 1, 2012, for purposes of promulgating rules and regulations and effective for all other purposes on January 1, 2013, designated the existing provisions as subsection (a) and added subsections (b) and (c).

Editor's notes. — Ga. L. 2007, p. 299, § 1/HB 147, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘Woman’s Ultrasound Right to Know Act.’”

Ga. L. 2007, p. 299, § 2/HB 147, not codified by the General Assembly, provides: “(a) The General Assembly finds that:

“(1) It is essential to the psychological and physical well-being of a woman considering an abortion that she receive complete and accurate information on the reality and status of her pregnancy and of her unborn child;

“(2) The decision to abort ‘is an important and often a stressful one, and it is desirable and imperative that it be made with full knowledge of its nature and consequences.’ *Planned Parenthood v. Danforth*, 428 U.S. 52, 67 (1976); and

"(3) The knowledgeable exercise of a woman's decision to have an abortion depends on the extent to which the woman receives sufficient information to make an informed choice between two alternatives: giving birth or having an abortion.

"(b) Based on the findings in subsection (a) of this section, it is the purpose of this Act to:

"(1) Ensure that every woman considering an abortion receive complete information on the reality and status of her pregnancy and of her unborn child and that every woman submitting to an abortion do so only after giving her voluntary and informed consent to the abortion procedure;

"(2) Protect unborn children from a woman's uninformed decision to have an abortion;

"(3) Reduce the risk that a woman may elect an abortion, only to discover later, with devastating psychological consequences, that her decision was not fully informed' *Planned Parenthood v. Casey*, 505 U.S. 833, 882 (1992); and

"(4) Adopt the construction of the term 'medical emergency' accepted by the United States Supreme Court in *Planned Parenthood v. Casey*, 505 U.S. 833 (1992)."

Ga. L. 2007, p. 299, § 7/HB 147, not codified by the General Assembly, provides: "Nothing in this Act shall be construed as creating or recognizing a right to abortion. It is not the intention of this Act to make lawful an abortion that is currently unlawful."

Ga. L. 2007, p. 299, § 8/HB 147, not

codified by the General Assembly, provides for severability.

Ga. L. 2012, p. 575, § 1/HB 954, not codified by the General Assembly, provides that: "The General Assembly makes the following findings:

"(1) At least by 20 weeks after fertilization there is substantial evidence that an unborn child has the physical structures necessary to experience pain;

"(2) There is substantial evidence that, by 20 weeks after fertilization, unborn children seek to evade certain stimuli in a manner which in an infant or an adult would be interpreted as a response to pain;

"(3) Anesthesia is routinely administered to unborn children who have developed 20 weeks or more past fertilization who undergo prenatal surgery;

"(4) Even before 20 weeks after fertilization, unborn children have been observed to exhibit hormonal stress responses to painful stimuli. Such responses were reduced when pain medication was administered directly to such unborn children;

"(4.1) Probable gestational age is an estimate made to assume the closest time to which the fertilization of a human ovum occurred and does not purport to be an exact diagnosis of when such fertilization occurred; and

"(5) It is the purpose of the State of Georgia to assert a compelling state interest in protecting the lives of unborn children from the stage at which substantial medical evidence indicates that they are capable of feeling pain."

RESEARCH REFERENCES

Am. Jur. 2d. — 1 Am. Jur. 2d, Abortion and Birth Control, §§ 103 et seq., 116 et seq.

C.J.S. — 1 C.J.S., Abortion and Birth Control, § 33 et seq.

31-9A-7. Preservation of patient anonymity in civil proceedings.

In any civil proceeding or action relating to this chapter or a breach of duty under this chapter, the court shall rule whether the anonymity of any female upon whom an abortion has been performed shall be preserved from public disclosure if she does not give her consent to such disclosure. The court, upon motion or sua sponte, shall make such a

ruling and, upon determining that her anonymity should be preserved, shall issue orders to the parties, witnesses, and counsel and shall direct the sealing of the record and exclusion of individuals from courtrooms or hearing rooms to the extent necessary to safeguard her identity from public disclosure. Each such order shall be accompanied by specific written findings explaining why the anonymity of the female should be preserved from public disclosure, why the order is essential to that end, how the order is narrowly tailored to serve that interest, and why no reasonable less restrictive alternative exists. This Code section may not be construed to conceal the identity of the plaintiff or of witnesses from the defendant. (Code 1981, § 31-9A-7, enacted by Ga. L. 2005, p. 1450, § 6/HB 197.)

RESEARCH REFERENCES

Am. Jur. 2d. — 1 Am. Jur. 2d, Abortion and Birth Control, § 42.

31-9A-8. Severability.

If any one or more provisions, Code sections, subsections, sentences, clauses, phrases, or words of this chapter or the application thereof to any person or circumstance is found to be unconstitutional, the same is declared to be severable, and the balance of this chapter shall remain effective notwithstanding such unconstitutionality. The General Assembly declares that it would have enacted this chapter and each Code section, subsection, sentence, clause, phrase, or word thereof irrespective of the fact that any one or more provisions, Code sections, subsections, sentences, clauses, phrases, or words would be declared unconstitutional. (Code 1981, § 31-9A-8, enacted by Ga. L. 2005, p. 1450, § 6/HB 197.)

CHAPTER 9B

PHYSICIAN'S OBLIGATION IN PERFORMANCE OF ABORTIONS

Sec. 31-9B-1. (Effective January 1, 2013) Definitions.	Sec. 31-9B-3. (Effective January 1, 2013) Required reporting of physicians and departments; confidentiality; failure to comply.
31-9B-2. (Effective January 1, 2013) Requirement to determine probable gestational age of unborn child.	

Effective date. — This chapter becomes effective May 1, 2012, for purposes of promulgating rules and regulations and for all other purposes is effective January 1, 2013.

Editor's notes. — Ga. L. 2012, p. 575, § 1/HB 954, not codified by the General Assembly, provides that: "The General Assembly makes the following findings:

"(1) At least by 20 weeks after fertilization there is substantial evidence that an unborn child has the physical structures necessary to experience pain;

"(2) There is substantial evidence that, by 20 weeks after fertilization, unborn children seek to evade certain stimuli in a manner which in an infant or an adult would be interpreted as a response to pain;

"(3) Anesthesia is routinely administered to unborn children who have devel-

oped 20 weeks or more past fertilization who undergo prenatal surgery;

"(4) Even before 20 weeks after fertilization, unborn children have been observed to exhibit hormonal stress responses to painful stimuli. Such responses were reduced when pain medication was administered directly to such unborn children;

"(4.1) Probable gestational age is an estimate made to assume the closest time to which the fertilization of a human ovum occurred and does not purport to be an exact diagnosis of when such fertilization occurred; and

"(5) It is the purpose of the State of Georgia to assert a compelling state interest in protecting the lives of unborn children from the stage at which substantial medical evidence indicates that they are capable of feeling pain."

31-9B-1. (Effective January 1, 2013) Definitions.

As used in this chapter, the term:

(1) "Abortion" has the meaning provided by Code Section 31-9A-2.

(2) "Medical emergency" has the meaning provided by Code Section 31-9A-2.

(3) "Medically futile" means that, in reasonable medical judgment, the unborn child has a profound and irremediable congenital or chromosomal anomaly that is incompatible with sustaining life after birth.

(4) "Physician" has the meaning provided by Code Section 31-9A-2.

(5) "Probable gestational age of the unborn child" means what will, in reasonable medical judgment and with reasonable probability, be the postfertilization age of the unborn child at the time the abortion is planned to be performed or induced, as dated from the time of fertilization of the human ovum.

(6) "Reasonable medical judgment" means a medical judgment that would be made by a reasonably prudent physician, knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved.

(7) "Unborn child" has the meaning provided by Code Section 31-9A-2. (Code 1981, § 31-9B-1, enacted by Ga. L. 2012, p. 575, § 3/HB 954.)

Code Commission notes. — Pursuant section (a) designation was removed as to Code Section 28-9-5, in 2012, the sub- there was not a subsection (b).

31-9B-2. (Effective January 1, 2013) Requirement to determine probable gestational age of unborn child.

(a) Except in the case of a medical emergency or when a pregnancy is diagnosed as medically futile, no abortion shall be performed or attempted to be performed unless the physician performing it has first made a determination of the probable gestational age of the unborn child or relied upon such a determination made by another physician.

(b) Failure by any physician to conform to any requirement of this Code section constitutes unprofessional conduct for purposes of paragraph (7) of subsection (a) of Code Section 43-34-8 relating to medical licensing sanctions. (Code 1981, § 31-9B-2, enacted by Ga. L. 2012, p. 575, § 3/HB 954.)

31-9B-3. (Effective January 1, 2013) Required reporting of physicians and departments; confidentiality; failure to comply.

(a) Any physician who performs or attempts to perform an abortion shall report to the department, in conjunction with the reports required under Code Section 31-9A-6 and in accordance with forms and rules and regulations adopted and promulgated by the department:

(1) If a determination of probable gestational age was made, the probable gestational age determined and the method and basis of the determination;

(2) If a determination of probable gestational age was not made, the basis of the determination that a medical emergency existed or that a pregnancy was diagnosed as medically futile;

(3) If the probable gestational age was determined to be 20 or more weeks, the basis of the determination that the pregnant woman had a medically futile pregnancy or had a condition which so complicated her medical condition as to necessitate the termination of her pregnancy to avert her death or to avert serious risk of substantial and irreversible physical impairment of a major bodily function, or the basis of the determination that it was necessary to preserve the life of an unborn child; and

(4) The method used for the abortion and, in the case of an abortion performed when the probable gestational age was determined to be 20 or more weeks, whether the method of abortion used was one that, in reasonable medical judgment, provided the best opportunity for the unborn child to survive or, if such a method was not used, the basis of the determination that the pregnancy was medically futile or that termination of the pregnancy in that manner would pose a greater risk either of the death of the pregnant woman or of the substantial and irreversible physical impairment of a major bodily function of the pregnant woman than would other available methods.

(b) By June 30 of each year, the department shall issue a public report providing statistics for the previous calendar year compiled from all of the reports covering that year submitted in accordance with this Code section for each of the items listed in subsection (a) of this Code section. Each such report shall also provide the statistics for all previous calendar years during which this Code section was in effect, adjusted to reflect any additional information from late or corrected reports. The department shall take care to ensure that none of the information included in the public reports could reasonably lead to the identification of any pregnant woman upon whom an abortion was performed.

(c) The department shall ensure that the names and identities of the physicians filing reports under this chapter shall remain confidential. The names and identities of such physicians shall not be subject to Article 4 of Chapter 18 of Title 50.

(d) Any physician who fails to submit a report by the end of the grace period of 30 days following the due date shall be subject to sanctions as specified in subsection (e) of Code Section 31-9A-6.

(e) The department shall adopt such rules and regulations as are reasonable and necessary to implement the provisions of this Code section. (Code 1981, § 31-9B-3, enacted by Ga. L. 2012, p. 575, § 3/HB 954.)

CHAPTER 10

VITAL RECORDS

Sec.		Sec.	
31-10-1.	Definitions.	31-10-16.	Criteria for determining death; immunity from liability.
31-10-2.	Maintenance and operation of vital records registration system.	31-10-17.	State registration of death certificates; certified copies; certificates of record.
31-10-3.	Rules and regulations.	31-10-18.	Registration of spontaneous fetal deaths.
31-10-4.	Appointment of state registrar of vital records.	31-10-19.	Reporting of induced termination of pregnancy.
31-10-5.	Duties and powers of state registrar; delegation of functions and duties.	31-10-20.	Permits for disposition, disinterment, and reinterment.
31-10-6.	Local registrars, local custodians, special abstracting agents, and deputies; appointment; duties.	31-10-21.	Record of marriage licenses.
31-10-7.	Form of certificates and reports; date received for registration required; filing or registration of information by photographic, electronic, or other means.	31-10-22.	Record of divorces, dissolutions, and annulments.
31-10-8.	Certification to county treasurers of birth and death certificates and spontaneous fetal death reports filed; fees.	31-10-23.	Amendment of certificates or reports.
31-10-9.	Registration of births.	31-10-24.	Preservation or disposition of vital records; certified reproductions; preserved originals and authorized reproductions as property of department.
31-10-9.1.	Social security account information of parents.	31-10-25.	Disclosure of information contained in vital records; transfer of records to State Archives.
31-10-10.	Registration of live born infants of unknown parentage.	31-10-26.	(Effective until January 1, 2013. See note.) Certified copies of vital records; issuance; evidentiary effect; use for statistical purposes; transmittal of records out of state; use for commercial or speculative purposes.
31-10-11.	Registration of delayed certificate of birth.	31-10-26.	(Effective January 1, 2013. See note.) Certified copies of vital records; issuance; use for statistical purposes; transmittal of records out of state; use for commercial or speculative purposes.
31-10-12.	Judicial procedure to establish facts of birth.	31-10-27.	Fees for copies or services.
31-10-13.	Certificates of adoption.	31-10-28.	Institutions to keep vital records.
31-10-13.1.	Certified copies of orders and registration of legitimations and paternity orders.	31-10-29.	Privileged nature of disclosures; notification of local registrar of institutional deaths and fetal deaths; notification of board of voting registrars of adult deaths.
31-10-13.2.	Provision of copies of legitimation and paternity orders to state registrar.		
31-10-14.	Issuance of new certificate of birth following adoption and legitimation or paternity determination.		
31-10-15.	Death certificate; filing; medical certification; forwarding death certificate to decedent's county of residence; purging voter registration list.		

Sec.		Sec.	
31-10-30.	Posting facts of death to birth certificates.	31-10-32.	Extension of periods for filing of certificates or reports.
31-10-31.	Penalties.	31-10-33.	Procedure for stillbirth.

Cross references. — Replacement of licenses, state identification cards, and other documents during periods of natural disaster, § 50-1-9.

Editor's notes. — Ga. L. 1982, p. 723, § 2, effective November 1, 1982, rewrote this chapter, amending, renumbering, and repealing the Code sections therein. See the history lines to determine, where applicable, the former Code section numbers.

The former chapter consisted of Code Sections 31-10-1 through 31-10-75. Those Code sections which were repealed were based on Ga. L. 1914, p. 157, §§ 3, 4; Ga.

L. 1927, p. 353, §§ 3, 4; Ga. L. 1931, p. 7, §§ 16, 17; Ga. L. 1933, p. 7, § 1; Ga. L. 1945, p. 236, §§ 1, 5, 6; Ga. L. 1953, Jan.-Feb. Sess., p. 140, § 2; Ga. L. 1964, p. 499, § 1 and Ga. L. 1981, p. 1456, § 1.

Administrative rules and regulations. — Vital records, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Human Resources (now the Department of Community Health for these purposes), Chapter 290-1-3.

Law reviews. — For note on 1991 amendments to this chapter, see 8 Ga. St. U.L. Rev. 81 (1992).

JUDICIAL DECISIONS

It was never intended that former Code 1933, § 88-1202 should repeal provisions of former Code 1933, § 38-303. Stewart v. State, 72 Ga. App. 308, 33 S.E.2d 744 (1945).

Law was not intended to preclude parents from testifying as to ages of

their children. Stewart v. State, 72 Ga. App. 308, 33 S.E.2d 744 (1945).

Cited in Evans v. DeKalb County Hosp. Auth., 154 Ga. App. 17, 267 S.E.2d 319 (1980); Porter v. Calhoun County, 162 Ga. App. 839, 293 S.E.2d 4 (1982).

OPINIONS OF THE ATTORNEY GENERAL

For discussion of new and corrected birth certificates for children adopted or legitimated outside of Georgia, see 1980 Op. Att'y Gen. No. 80-58.

Naturopath is not authorized to sign a death certificate. 1957 Op. Att'y Gen. p. 339.

31-10-1. Definitions.

As used in this chapter, the term:

- (1) "Commissioner" means the commissioner of public health.
- (2) "Dead body" means a human body or such parts of such human body from the condition of which it reasonably may be concluded that death recently occurred.
- (3) "Department" means the Department of Public Health.
- (4) "Fetal death" means death prior to the complete expulsion or extraction from its mother of a product of human conception, irre-

spective of the duration of pregnancy; the death is indicated by the fact that after such expulsion or extraction the fetus does not breathe or show any other evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles.

(5) "File" means the presentation of a vital record provided for in this chapter for registration by the State Office of Vital Records.

(6) "Final disposition" means the burial, interment, cremation, removal from the state, or other authorized disposition of a dead body or fetus.

(7) "Induced termination of pregnancy" means the purposeful interruption of pregnancy with the intention other than to produce a live-born infant or to remove a dead fetus and which does not result in a live birth.

(8) "Institution" means any establishment, public or private, which provides in-patient or out-patient medical, surgical, or diagnostic care or treatment or nursing, custodial, or domiciliary care, or to which persons are committed by law.

(9) "Live birth" means the complete expulsion or extraction from its mother of a product of human conception, irrespective of the duration of pregnancy, which, after such expulsion or extraction, breathes, or shows any other evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles, whether or not the umbilical cord has been cut or the placenta is attached.

(10) "Local custodian" means the person appointed by the state registrar to maintain and certify the local records of birth and death.

(11) "Local registrar" means the person appointed by the state registrar to collect and transmit to the department certificates of birth, death, fetal death, and any other reports required by this chapter.

(12) "Physician" means a person authorized or licensed to practice medicine or osteopathy pursuant to Chapter 34 of Title 43.

(13) "Registration" means the acceptance by the State Office of Vital Records and the incorporation of vital records provided for in this chapter into the vital records registration system.

(14) "Special abstracting agent" means the person appointed by the state registrar to examine and abstract evidence and submit such information to the department in order to file delayed certificates of birth or amend certificates of birth.

(15) “Spontaneous fetal death” means the expulsion or extraction of a product of human conception resulting in other than a live birth and which is not an induced termination of pregnancy.

(16) “State registrar” means the person responsible for the State Office of Vital Records and the state vital records registration system.

(17) “Stillbirth” or “stillborn” means an unintended, intrauterine fetal death after a gestational age of not less than 20 completed weeks or of a fetus with a weight of 350 grams or more.

(18) “Vital records” means certificates or reports of birth, death, marriage, divorce, dissolution of marriage, or annulment and data related thereto.

(19) “Vital records registration system” means the registration, collection, preservation, amendment, and certification of vital records; the collection of other reports required by this chapter; and activities related thereto including the tabulation, analysis, and print or electronic publication of vital statistics.

(20) “Vital statistics” means the data derived from certificates and reports of birth, death, spontaneous fetal death, induced termination of pregnancy, marriage, divorce, dissolution of marriage, or annulment and related reports. (Ga. L. 1945, p. 236, § 2; Ga. L. 1952, p. 208, § 1; Ga. L. 1953, Jan.-Feb. Sess., p. 140, § 1; Code 1933, § 88-1702, enacted by Ga. L. 1964, p. 499, § 1; Code 1933, § 88-1701, enacted by Ga. L. 1982, p. 723, § 1; Code 1981, § 31-10-2; Code 1981, § 31-10-1, enacted by Ga. L. 1982, p. 723, § 2; Ga. L. 2004, p. 477, § 1; Ga. L. 2008, p. 585, § 2/SB 381; Ga. L. 2009, p. 453, §§ 1-4, 1-6/HB 228; Ga. L. 2010, p. 838, § 11/SB 388; Ga. L. 2011, p. 705, §§ 6-3, 6-5/HB 214.)

The 2010 amendment, effective June 3, 2010, inserted “print or electronic” near the end of paragraph (19).

The 2011 amendment, effective July 1, 2011, substituted “commissioner of public health” for “commissioner of community health” in paragraph (1); and substituted “Department of Public Health” for “Department of Community Health” in paragraph (3).

Editor’s notes. — Ga. L. 2008, p. 585, § 1/SB 381, not codified by the General Assembly, provides that: “This Act shall be known and may be cited as the ‘No Heart-beat Act.’”

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

RESEARCH REFERENCES

ALR. — Who is a physician or surgeon within statute in relation to vital statistics, 8 ALR 1070.

31-10-2. Maintenance and operation of vital records registration system.

There is hereby established within the department the State Office of Vital Records which shall maintain and operate the state's official vital records registration system. The system shall be in effect in all areas of the state, and the State Office of Vital Records shall provide for proper administration of the system and preservation of its records. (Code 1933, § 88-1702, enacted by Ga. L. 1982, p. 723, § 1; Code 1981, § 31-10-2, enacted by Ga. L. 1982, p. 723, § 2; Ga. L. 2004, p. 477, § 2.)

31-10-3. Rules and regulations.

The department is authorized to adopt, amend, and repeal rules and regulations for the purpose of carrying out the provisions of this chapter. (Code 1933, § 88-1703, enacted by Ga. L. 1982, p. 723, § 1; Code 1981, § 31-10-3, enacted by Ga. L. 1982, p. 723, § 2.)

31-10-4. Appointment of state registrar of vital records.

The commissioner shall appoint the state registrar of vital records, hereinafter referred to as "state registrar," subject to the rules and regulations of the State Personnel Board, classified service. (Code 1933, § 88-1704, enacted by Ga. L. 1982, p. 723, § 1; Code 1981, § 31-10-4, enacted by Ga. L. 1982, p. 723, § 2; Ga. L. 2009, p. 745, § 2/SB 97; Ga. L. 2012, p. 446, § 2-41/HB 642.)

The 2012 amendment, effective July 1, 2012, substituted "State Personnel Board" for "State Personnel Administration" in this Code section.

Editor's notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: "Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be trans-

ferred to the Department of Administrative Services on the effective date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."

JUDICIAL DECISIONS

Cited in *Porter v. Calhoun County*, 250 Ga. 566, 300 S.E.2d 143 (1983).

31-10-5. Duties and powers of state registrar; delegation of functions and duties.

(a) The state registrar shall:

(1) Administer and enforce the provisions of this chapter and the rules and regulations issued under this chapter and issue instructions for the efficient administration of the State Office of Vital Records;

(2) Direct and supervise the State Office of Vital Records and be custodian of its records;

(3) Direct, supervise, and control the activities of all persons when they are engaged in activities pertaining to the operation of the State Office of Vital Records;

(4) Conduct training programs to promote uniformity of policy and procedures throughout the state in matters pertaining to the State Office of Vital Records;

(5) Prescribe, furnish, and distribute such forms as are required by this chapter and the rules and regulations issued under this chapter or prescribe such other means for transmission of data as will accomplish the purpose of complete and accurate reporting and registration;

(6) Prepare and publish in print or electronically reports of vital statistics of this state and such other reports as may be required by the department; and

(7) Provide to local health agencies copies of or data derived from certificates and reports required under this chapter, as the state registrar shall determine are necessary for local health planning and program activities. The state registrar shall establish a schedule with each local health agency for transmittal of the copies or data. The copies or data shall remain the property of the department, and the uses which may be made of them shall be governed by the state registrar.

(b) The state registrar may establish or designate offices in the state to aid in the efficient administration of the State Office of Vital Records.

(c) The state registrar may delegate such functions and duties vested in the state registrar to employees of the State Office of Vital Records and to employees of any office established or designated under subsection (b) of this Code section. (Code 1933, § 88-1703, enacted by Ga. L. 1964, p. 499, § 1; Code 1933, § 88-1705, enacted by Ga. L. 1982, p. 723, § 1; Code 1981, § 31-10-3; Code 1981, § 31-10-5, enacted by Ga. L. 1982, p. 723, § 2; Ga. L. 1991, p. 94, § 31; Ga. L. 2004, p. 477, § 3; Ga. L. 2010, p. 838, § 10/SB 388.)

The 2010 amendment, effective June 3, 2010, inserted "in print or electronically" in paragraph (a)(6).

OPINIONS OF THE ATTORNEY GENERAL

Validity of racial designations on birth certificates and other official documents. — State of the law is such as not only to permit use of racial designations on birth certificates and other official

documents but federal law affirmatively mandates use of racial designations in certain areas. 1971 Op. Att'y Gen. No. 71-135.

31-10-6. Local registrars, local custodians, special abstracting agents, and deputies; appointment; duties.

(a) The state registrar may appoint a local registrar and local custodian for each county and a special abstracting agent as necessary. Appointees must meet the qualifications and perform the duties required by this chapter and regulations of the department. The state registrar may appoint local deputy registrars as necessary. A local registrar, subject to the approval of the state registrar, may appoint a deputy or deputies. A local custodian, subject to the approval of the state registrar, may appoint a clerk or clerks of records.

(b) Local registrars shall collect and receive vital records, review them for accuracy and completeness, and keep and submit other reports as may be required by the department.

(c) Local custodians shall file, record, and preserve copies of vital records and issue certified copies provided for by law.

(d) Special abstracting agents shall examine evidence, abstract evidence onto prescribed forms, and submit such completed forms to the State Office of Vital Records for the filing of delayed certificates of birth or the amendment of certificates of live birth. (Ga. L. 1914, p. 157, § 18; Ga. L. 1927, p. 353, § 18; Ga. L. 1931, p. 7, §§ 16, 17; Ga. L. 1933, p. 7, § 1; Code 1933, § 88-1210; Code 1933, § 88-1706, enacted by Ga. L. 1964, p. 499, § 1; Code 1981, § 31-10-6; Ga. L. 1982, p. 723, §§ 1, 2; Ga. L. 2004, p. 477, §§ 4, 11.)

JUDICIAL DECISIONS

Cited in Ward v. Ward, 115 Ga. App. Calhoun County, 250 Ga. 566, 300 S.E.2d 778, 156 S.E.2d 210 (1967); Porter v. 143 (1983).

RESEARCH REFERENCES

C.J.S. — 39A C.J.S., Health and Environment, § 74.

31-10-7. Form of certificates and reports; date received for registration required; filing or registration of information by photographic, electronic, or other means.

(a) In order to promote and maintain nation-wide uniformity in the system of vital records, the forms of certificates and reports required by this chapter, or by regulations adopted under this chapter, shall include as a minimum the items recommended by the federal agency responsible for national vital records and statistics.

(b) Each certificate, report, and other document required by this chapter shall be on a form or in a format prescribed by the state registrar.

(c) All vital records shall contain the date received for registration.

(d) Information required in certificates or reports authorized by this chapter may be filed and registered by photographic, electronic, or other means as prescribed by the state registrar. (Ga. L. 1914, p. 157, § 17; Ga. L. 1927, p. 353, § 17; Ga. L. 1931, p. 7, §§ 16, 17; Ga. L. 1933, p. 7, § 1; Code 1933, § 88-1207; Code 1933, § 88-1708, enacted by Ga. L. 1964, p. 499, § 1; Code 1933, § 88-1707, enacted by Ga. L. 1982, p. 723, § 1; Code 1981, § 31-10-8; Code 1981, § 31-10-7, enacted by Ga. L. 1982, p. 723, § 2; Ga. L. 1991, p. 94, § 31.)

OPINIONS OF THE ATTORNEY GENERAL

Validity of racial designations on birth certificates and other official documents. — State of the law is such as not only to permit use of racial designations on birth certificates and other official

documents but federal law affirmatively mandates use of racial designations in certain areas. 1971 Op. Att'y Gen. No. 71-135.

31-10-8. Certification to county treasurers of birth and death certificates and spontaneous fetal death reports filed; fees.

(a) The local registrar shall certify to the treasurer of the county each month the number of birth and death certificates and spontaneous fetal death reports filed with the state office of vital records with respect to the treasurer's county and the amount due. Upon certification, any fees due shall be paid by the county treasurer out of the general fund of the county.

(b) Each local registrar shall receive from the county treasurer the sum of \$2.00 for each complete certificate of birth, death, or spontaneous fetal death report which occurred in that local registrar's county and is personally signed by that local registrar within the time prescribed by this chapter. A fee of 50¢ shall be paid for certificates or

reports filed after the limits shown in this chapter except as noted by regulations adopted by the department.

(c) The local custodian of vital records shall be paid a fee of \$1.00 for each birth and death certificate properly recorded and indexed. Said fee shall be paid from county funds by the county treasurer.

(d) Special abstractors shall be paid a fee of \$2.00 for the complete filing of an abstract of evidence for a delayed certificate of birth or an amendment to a certificate of live birth which originates in the abstractor's county. Said fee shall be paid from county funds by the county treasurer.

(e) Notwithstanding any other provision of this Code section, in counties where the local registrar or local custodian of vital records or special abstracting agent are employees of the county board of health, fees payable under this subsection shall be paid to the county health department monthly. (Ga. L. 1914, p. 157, § 19; Ga. L. 1927, p. 353, § 19; Code 1933, § 88-1211; Ga. L. 1945, p. 236, § 32; Code 1933, § 88-1707, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1975, p. 1179, § 1; Code 1933, § 88-1708, enacted by Ga. L. 1982, p. 723, § 1; Code 1981, § 31-10-7; Code 1981, § 31-10-8, enacted by Ga. L. 1982, p. 723, § 2; Ga. L. 1991, p. 669, § 1.)

JUDICIAL DECISIONS

Employees of county board of health sole exception to general rule.

— Sole exception for employees of the county board of health from the general rule that local custodians shall keep their fees clearly infers that the General Assembly meant to include other custodians in the general rule, notwithstanding any other offices the employees might have held. *Porter v. Calhoun County*, 250 Ga. 566, 300 S.E.2d 143 (1983) (construing former similar provisions).

Retention of fees by judge and custodian.

— One who is both the probate judge and custodian of vital records of a county is entitled to keep fees paid to the person as custodian of vital records, and the county is not entitled to such fees. *Porter v. Calhoun County*, 250 Ga. 566, 300 S.E.2d 143 (1983) (construing former similar provisions).

31-10-9. Registration of births.

(a) A certificate of birth for each live birth which occurs in this state shall be filed with the State Office of Vital Records within five days after such birth and filed in accordance with this Code section and regulations of the department.

(b) When a birth occurs in an institution or en route thereto, the person in charge of such institution or that person's designated representative shall obtain the personal data, prepare the birth certificate, certify, either by signature or by an electronic process established or approved by the State Office of Vital Records, that the child was born

alive at the place and time and on the date stated and file the certificate with the State Office of Vital Records. The physician or other person in attendance shall provide the medical information required by the certificate within 72 hours after the birth occurs.

(c) Except as provided in subsection (b) of this Code section, when a birth occurs outside an institution, the certificate shall be prepared and filed by one of the following in the indicated order of priority:

(1) The physician or certified nurse midwife in attendance at or immediately after the birth; or in the absence of such person:

(2) Any other person in attendance at or immediately after the birth; or in the absence of such a person:

(3) The father or the mother; or in the absence of the father and inability of the mother:

(4) The person in charge of the premises where the birth occurred.

(d) When a birth occurs on a moving conveyance within the United States and the child is first removed from the conveyance in this state, the birth shall be registered in this state and the place where it is first removed shall be considered the place of birth. When a birth occurs on a moving conveyance while in international waters or airspace or in a foreign country or its airspace and the child is first removed from the conveyance in this state, the birth shall be registered in this state but the certificate shall show the actual place of birth insofar as can be determined.

(e) The name of the natural father or putative father shall be entered on the certificate of live birth as follows:

(1) If the mother was married either at the time of conception or at the time of birth, the name of the husband shall be entered on the certificate as the father of the child unless paternity has been determined otherwise by a court having jurisdiction, in which case the name of the father as determined by the court shall be entered;

(2) If the mother is not married at either the time of conception or at the time of birth, the name of the putative father shall not be entered on the certificate of birth without the written consent of the mother and the person to be named as father;

(3) In any case in which paternity of a child is determined by a court of competent jurisdiction, the name of the father and the surname of the child shall be entered on the certificate of birth in accordance with the finding and order of the court;

(4) If the father is not named on the certificate of birth, no other information about the father shall be entered on the certificate; or

(5) Except as provided in paragraph (3) of this subsection, in all other cases, the surname of the child shall be the legal surname of the mother at the time of the birth entered on the certificate as designated by the mother. When a paternity acknowledgment is completed, the surname of the child shall be entered as designated by both parents.

(f) The birth certificate of a child born to a married woman as a result of artificial insemination, with consent of her husband, shall be completed in accordance with the provisions of subsection (e) of this Code section.

(g) Either of the parents of the child, or other informant, shall verify the accuracy of the personal data entered on the certificate in time to permit the filing of the certificate within the time period prescribed in subsection (a) of this Code section.

(h) All birth certificates filed and registered must identify the recorded person by name and the name of each legal parent of such person and the name of all other persons required by this Code section or by regulation. No obscenities, numbers, symbols, or other such nonidentifying name information will be accepted. If a legal parent has not decided upon a first or middle name for the child before the time limits established in this Code section, the birth record shall be registered without the child's first or middle name, or both, unless a court order provides otherwise. (Ga. L. 1914, p. 157, §§ 12, 13; Ga. L. 1927, p. 353, §§ 12, 13; Code 1933, §§ 88-1201, 88-1202; Ga. L. 1945, p. 236, §§ 8, 11; Ga. L. 1953, Jan.-Feb. Sess., p. 140, § 4; Code 1933, § 88-1709, enacted by Ga. L. 1964, p. 499, § 1; Code 1981, § 31-10-30; Ga. L. 1982, p. 723, § 1; Code 1981, § 31-10-9, enacted by Ga. L. 1982, p. 723, § 2; Ga. L. 1984, p. 22, § 31; Ga. L. 1991, p. 669, § 2; Ga. L. 2004, p. 477, § 5; Ga. L. 2005, p. 60, § 31/HB 95.)

JUDICIAL DECISIONS

Cited in *Quilloin v. Walcott*, 434 U.S. 246, 98 S. Ct. 549, 54 L. Ed. 2d 511 (1978); *Jones v. Sullivan*, 953 F.2d 1291 (11th Cir. 1992).

OPINIONS OF THE ATTORNEY GENERAL

When a putative father's name has been removed from a child's birth certificate, after the presentation of competent evidence to an appropriate court, the child's name on that certificate should

be changed so as to give the child the legal surname of the mother, the child's only legally acknowledged parent. 1982 Op. Att'y Gen. No. U82-42.

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Health, § 52.

C.J.S. — 39A C.J.S., Health and Environment, § 74.

ALR. — Inclusion or exclusion of the day of birth in computing one's age, 5 ALR2d 1143.

31-10-9.1. Social security account information of parents.

(a) Social security account information of the mother and father, if paternity is acknowledged by the father, of a child born within this state shall be entered in the medical and health statistics section of the certificate of live birth at the time of filing the certificate of birth as provided in Code Section 31-10-9.

(b) The state registrar shall make available the records of parent name and social security number to the Child Support Enforcement Agency of the Department of Human Services for its use in the establishment of paternity or the enforcement of child support orders.

(c) Information obtained by the Child Support Enforcement Agency of the Department of Human Services pursuant to this Code section may be used in an action or proceeding before any court, administrative tribunal, or other body for the purpose of establishing a child support obligation, collecting child support, or locating individuals owing the obligation. (Code 1981, § 31-10-9.1, enacted by Ga. L. 1992, p. 1270, § 1; Ga. L. 1997, p. 1613, § 35; Ga. L. 2009, p. 453, § 2-2/HB 228.)

Law reviews. — For article commenting on the 1997 amendment of this Code section, see 14 Ga. L. Rev. 121 (1997).

31-10-10. Registration of live born infants of unknown parentage.

(a) Whoever assumes the custody of a live born infant of unknown parentage shall report on a form and in a manner prescribed by the state registrar within ten days to the State Office of Vital Records the following information:

- (1) The date and place of finding;
- (2) Sex, color or race, and approximate birth date or age of child;
- (3) Name and address of the person or institution with whom the child has been placed for care;
- (4) Name given to the child by the custodian of the child; and
- (5) Other data required by the state registrar.

(b) The place where the child was found shall be entered as the place of birth.

(c) A report registered under this Code section shall constitute the certificate of birth for the child.

(d) If the child is subsequently identified and a certificate of birth is found or obtained, the report registered under this Code section shall be placed in a special file and shall not be subject to inspection except upon order of a court of competent jurisdiction or as provided by regulation. (Ga. L. 1945, p. 236, § 13; Code 1933, § 88-1710, enacted by Ga. L. 1964, p. 499, § 1; Code 1981, § 31-10-35; Ga. L. 1982, p. 723, § 1; Code 1981, § 31-10-10, enacted by Ga. L. 1982, p. 723, § 2; Ga. L. 2004, p. 477, § 11.)

31-10-11. Registration of delayed certificate of birth.

(a) When a certificate of birth of a person born in this state has not been filed before that person's first birthday, a delayed certificate of birth may be filed in accordance with regulations of the department. The certificate shall be registered subject to such evidentiary requirements as the department shall by regulation prescribe to substantiate the alleged facts of birth.

(b) Delayed certificates of birth filed after the first birthday shall be made on forms prescribed by the state registrar, marked "Delayed," and shall show on their face the date of the delayed registration.

(c) A summary statement of the evidence submitted in support of the delayed registration shall be endorsed on the delayed certificate of birth.

(d) When an applicant does not submit the minimum documentation required in the regulations for delayed registration or when the state registrar has reasonable cause to question the validity or adequacy of the applicant's sworn statement or the documentary evidence, and if the deficiencies are not corrected, the state registrar shall not register the delayed certificate of birth and shall advise the applicant in writing of the reasons for this action and shall further advise the applicant of the applicant's right of judicial appeal.

(e) The department may by regulation provide for the dismissal of an application which is not actively prosecuted.

(f) No delayed certificate of birth shall be registered for a deceased person. (Code 1933, § 88-1711, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1975, p. 1179, § 2; Code 1981, § 31-10-31; Ga. L. 1982, p. 723, § 1; Code 1981, § 31-10-11, enacted by Ga. L. 1982, p. 723, § 2; Ga. L. 1983, p. 732, § 1; Ga. L. 1991, p. 669, § 3.)

31-10-12. Judicial procedure to establish facts of birth.

(a) If a delayed certificate of birth is rejected under the provisions of Code Section 31-10-11, a petition signed and sworn to by the petitioner

may be filed in either the superior court or the probate court in the county of residence of the person for whom a delayed certificate of birth is sought for an order establishing a record of the date and place of the birth and the parentage of the person whose birth is to be registered and shall allege:

(1) That the person for whom a delayed certificate of birth is sought was born in this state;

(2) That no certificate of birth of such person can be found in the files of the State Office of Vital Records or the office of any local custodian of vital records;

(3) That diligent efforts by the petitioner have failed to obtain the evidence required in accordance with Code Section 31-10-11 and regulations adopted pursuant thereto;

(4) That the state registrar has refused to register a delayed certificate of birth; and

(5) Such other allegations as may be required.

(b) The petition shall be accompanied by a statement of the state registrar made in accordance with Code Section 31-10-11 and all documentary evidence which was submitted to the state registrar in support of such registration.

(c) The superior court or probate court, as the case may be, shall fix a time and place for hearing the petition and shall give the state registrar not less than ten days' notice of said hearing. The state registrar or his authorized representative may appear and testify in the proceeding.

(d) If the superior court or probate court finds, from the evidence presented, that the person from whom a delayed certificate of birth is sought was born in this state, it shall make findings as to the place and date of birth, parentage, and such other findings as may be required and shall issue an order, on a form prescribed and furnished by the state registrar, to establish a delayed certificate of birth. This order shall include the birth data to be registered, a description of the evidence presented as prescribed by Code Section 31-10-11, and the date of the court's action.

(e) The clerk of superior court or the probate court, as the case may be, shall forward each such order to the state registrar not later than the tenth day of the calendar month following the month in which it was entered. Such order shall be registered by the state registrar and shall constitute the certificate of birth from which certified copies may be issued in accordance with this chapter. (Ga. L. 1943, p. 424, §§ 1-7; Ga. L. 1949, p. 384, § 1; Ga. L. 1956, p. 791, §§ 1, 2; Code 1933,

§ 88-1712, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1982, p. 3, § 31; Code 1981, § 31-10-32; Ga. L. 1982, p. 723, § 1; Code 1981, § 31-10-12, enacted by Ga. L. 1982, p. 723, § 2; Ga. L. 2004, p. 477, § 11; Ga. L. 2008, p. 119, § 1/HB 111.)

31-10-13. Certificates of adoption.

(a) For each adoption decreed by a court of competent jurisdiction in this state, the court shall require the preparation of a report of adoption on a form prescribed and furnished by the state registrar. The report shall include such facts as are necessary to locate and identify the original certificate of birth of the person adopted; shall provide information necessary to establish a new certificate of birth of the person adopted; and shall identify the order of adoption and be certified by the clerk of court.

(b) Information necessary to prepare the report of adoption shall be furnished by the petitioner for adoption or the petitioner's attorney. The appropriate agency or any person having knowledge of the facts shall supply the court with such additional information as may be necessary to complete the report. The provision of such information shall be prerequisite to the issuance of a final decree in the matter by the court.

(c) Whenever an adoption decree is amended or annulled, the clerk of the court shall prepare a report thereof, which shall include such facts as are necessary to identify the original adoption report and the facts amended in the adoption decree as shall be necessary to amend the birth record properly.

(d) Not later than the fifteenth day of each calendar month or more frequently, as directed by the state registrar, the clerk of the court shall forward to the state registrar reports of decrees of adoption, annulment of adoption, and amendments of decrees of adoption which were entered in the preceding month, together with such related reports as the state registrar shall require.

(e) When the state registrar shall receive a certificate of adoption, report of annulment of adoption, or amendment of a decree of adoption of a person born outside this state, the state registrar shall forward such certificate or report to the state registrar in the indicated state of birth.

(f) The following shall apply to certificates of birth of adopted persons born in a foreign country:

(1) If a person was born in a foreign country, is not a citizen of the United States, and does not meet the requirements of the federal Child Citizenship Act of 2000, P.L. 106-395, 114 Stat. 1631, but was adopted through a court in this state, the state registrar shall

prepare and register a certificate in this state. The certificate shall be established upon receipt of a report of adoption from the court decreeing the adoption and proof of the date and place of birth of the child. The certificate shall be labeled "Certificate of Foreign Birth" and shall show the actual country of birth. A statement shall also be included on the certificate indicating that it is not evidence of United States citizenship for the person for whom it is issued. After registration of the birth certificate in the new name of the adopted person, the state registrar shall seal and file the report of adoption which shall not be subject to inspection except upon order of a court of competent jurisdiction or as provided by statute;

(2) If a person was born in a foreign country and was not a citizen of the United States at the time of birth but meets the requirements of the federal Child Citizenship Act of 2000, P.L. 106-395, 114 Stat. 1631, and was adopted through a court in this state, the state registrar shall prepare and register a certificate in this state. The certificate shall be established upon receipt of a report of adoption from the court decreeing the adoption and proof of the date and place of birth of the child. The certificate shall be labeled "Certificate of Foreign Birth" and shall show the actual country of birth. After registration of the birth certificate in the new name of the adopted person, the state registrar shall seal and file the report of adoption which shall not be subject to inspection except upon order of a court of competent jurisdiction or as provided by statute; and

(3) If a person was born in a foreign country and was a citizen of the United States at the time of birth, the state registrar shall not prepare a "Certificate of Foreign Birth" and shall notify the adoptive parents of the procedure for obtaining a revised birth certificate for their child through the United States Department of State. (Ga. L. 1945, p. 236, § 10; Ga. L. 1953, Jan.-Feb. Sess., p. 140, § 3; Ga. L. 1955, p. 208, § 1; Ga. L. 1959, p. 304, § 1; Ga. L. 1961, p. 120, § 1; Code 1933, § 88-1713, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1965, p. 546, § 1; Ga. L. 1965, p. 651, § 1; Code 1981, § 31-10-33; Ga. L. 1982, p. 723, § 15; Code 1981, § 31-10-13, enacted by Ga. L. 1982, p. 723, § 2; Ga. L. 1984, p. 1015, § 1; Ga. L. 1991, p. 669, § 4; Ga. L. 1992, p. 2410, § 1; Ga. L. 2003, p. 503, § 9.)

Cross references. — Form of certificate of adoption, § 19-8-15.

31-10-13.1. Certified copies of orders and registration of legitimations and paternity orders.

(a) For each legitimation, annulment of legitimation, and amendment of an order of legitimation decreed by a court of competent jurisdiction in this state, the clerk of the court shall not later than the

fifteenth day of each calendar month or more frequently, as directed by the state registrar, forward to the state registrar a certified copy of each order of legitimation, annulment of legitimation, and amendment of an order of legitimation which was entered in the preceding month. Each order of legitimation, annulment of legitimation, and amendment of an order of legitimation shall comply with paragraph (2) of subsection (c) of Code Section 31-10-23.

(b) When the state registrar receives a certified copy of the order of legitimation, annulment of legitimation, or amendment of an order of legitimation of a person born outside this state, the state registrar shall forward such certified copy of the order to the state registrar in the indicated state of birth. (Code 1981, § 31-10-13.1, enacted by Ga. L. 2004, p. 915, § 1.)

31-10-13.2. Provision of copies of legitimation and paternity orders to state registrar.

(a) In each case in which an order declaring paternity is entered by a court of competent jurisdiction in this state or by the Office of State Administrative Hearings, the clerk of the court or the Office of State Administrative Hearings shall not later than the fifteenth day of each calendar month or more frequently, as directed by the state registrar, forward to the state registrar a certified copy of each order of paternity, annulment of paternity, and amendment of an order of paternity which was entered in the preceding month. The order of paternity, annulment of paternity, and amendment of an order of paternity shall comply with paragraph (2) of subsection (c) of Code Section 31-10-23.

(b) When the state registrar receives a certified copy of an order of paternity, annulment of paternity, or amendment of an order of paternity of a person born outside this state, the state registrar shall forward such certified copy of the order to the state registrar in the indicated state of birth. (Code 1981, § 31-10-13.2, enacted by Ga. L. 2004, p. 915, § 2.)

31-10-14. Issuance of new certificate of birth following adoption and legitimation or paternity determination.

(a) The state registrar shall establish a new certificate of birth for a person born in this state when the state registrar receives the following:

(1) A report of adoption as provided in Code Section 31-10-13 or a report of adoption prepared and filed in accordance with the laws of another state or foreign country, or a certified copy of the decree of adoption, together with the information necessary to identify the original certificate of birth and to establish a new certificate of birth.

A new certificate of birth shall not be established if the court decreeing the adoption directs that a new birth certificate not be issued;

(2) A certified copy of an order of legitimation, annulment of legitimation, or amendment of an order of legitimation as provided in Code Section 31-10-13.1 that requires the establishment of a new certificate of birth;

(3) A certified copy of an order of paternity, annulment of paternity, or amendment of an order of paternity as provided in Code Section 31-10-13.2 that requires the establishment of a new certificate of birth; or

(4) A request that a new certificate be established as prescribed by regulation and such evidence as required by regulation proving that both parents married to each other have acknowledged the paternity of such person and request that the surname be changed to that of the father.

(b) When a new certificate of birth is established pursuant to this Code section for a person born in this state, the date of birth contained on the original certificate shall be shown. The true place of birth shall be shown if the adoptee is the natural child of the spouse of the adoptive parent in the case of step-parent adoptions. The true place of birth shall be shown for all legitimations. For full adoptions, where neither parent is the natural parent of the adoptee, the place of birth shall be, at the election of the adoptive parents, either the true place of birth of the adoptee or the residence of the adoptive parents at the time of the adoptee's birth. The place of birth indicated must be located in Georgia.

(c) Upon receipt of a report of an amended decree of adoption, the certificate of birth shall be amended as provided by regulation.

(d) Upon receipt of a report or decree of annulment of adoption, the original certificate of birth shall be restored to its place in the files and the new certificate and evidence shall not be subject to inspection except upon order of a court of competent jurisdiction or as provided by regulation.

(e) If no certificate of birth is on file for the person for whom a new birth certificate is to be established under this Code section and the date and place of birth have not been determined in the adoption, legitimation, or paternity proceedings, a delayed certificate of birth shall be filed with the state registrar as provided in Code Section 31-10-11 or 31-10-12 before a new certificate of birth is established. The new birth certificate shall be prepared on the delayed birth certificate form.

(f) When a new certificate of birth is established by the state registrar, the original birth certificate shall not be subject to inspection

except as provided in this Code section. All copies of the original certificate of birth in the custody of any other custodian of vital records in this state shall be sealed from inspection and forwarded to the state registrar, as the state registrar shall direct.

(g) The new certificate shall be substituted for the original certificate of birth in the files and the original certificate of birth and the evidence of adoption, legitimation, or paternity determination shall not be subject to inspection except upon order of a court of competent jurisdiction or as provided by statute. (Ga. L. 1945, p. 236, § 25; Code 1933, § 88-1714, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1965, p. 546, § 1; Code 1981, § 31-10-34; Ga. L. 1982, p. 723, § 1; Code 1981, § 31-10-14, enacted by Ga. L. 1982, p. 723, § 2; Ga. L. 1991, p. 94, § 31; Ga. L. 1992, p. 2410, § 2; Ga. L. 2003, p. 503, § 10; Ga. L. 2004, p. 915, § 3.)

Cross references. — Legitimation generally, § 19-7-20 et seq. Determination of paternity generally, § 19-7-40 et

seq. Amendments of certificates or reports, § 31-10-23.

JUDICIAL DECISIONS

Department to be made party to proceedings for alteration of birth certificate. — Alteration of birth certificate as regards paternity is obtained by Department of Public Health (now Department of Human Resources) which should be made a party to such proceed-

ings. This is true even if the petition is construed as an action to have the superior court determine the party's paternity. *Ward v. Ward*, 115 Ga. App. 778, 156 S.E.2d 210 (1967) (decided under Ga. L. 1965, p. 546, § 1).

RESEARCH REFERENCES

C.J.S. — 39A C.J.S., Health and Environment, § 74.

31-10-15. Death certificate; filing; medical certification; forwarding death certificate to decedent's county of residence; purging voter registration list.

(a) A certificate of death for each death which occurs in this state shall be filed with the local registrar of the county in which the death occurred or the body was found within ten days after the death as follows:

(1) If the place of death is unknown but the dead body is found in this state, the certificate of death shall be completed and filed in accordance with this Code section. The place where the body is found shall be shown as the place of death. If the date of death is unknown, it shall be the date the body was found and the certificate marked as such; or

(2) When death occurs in a moving conveyance in the United States and the body is first removed from the conveyance in this state, the death shall be registered in this state and the place where it is first removed shall be considered the place of death. When a death occurs on a moving conveyance while in international waters or airspace or in a foreign country or its airspace and the body is first removed from the conveyance in this state, the death shall be registered in this state but the certificate shall show the actual place of death insofar as can be determined.

(b) The funeral director or person acting as such who first assumes custody of the dead body shall file the certificate of death within 72 hours. Such director or person shall obtain the personal data from the next of kin or the best qualified person or source available and shall obtain the medical certification from the person responsible therefor.

(c)(1) The medical certification as to the cause and circumstances of death shall be completed, signed, and returned to the funeral director or person acting as such within 72 hours after death by the physician in charge of the patient's care for the illness or condition which resulted in death, except when inquiry is required by Article 2 of Chapter 16 of Title 45, the "Georgia Death Investigation Act." In the absence of said physician or with that physician's approval the certificate may be completed and signed by an associate physician, the chief medical officer of the institution in which death occurred, or the physician who performed an autopsy upon the decedent, provided that such individual has access to the medical history of the case, views the deceased at or after death, and death is due to natural causes. If, 30 days after a death, the physician in charge of the patient's care for the illness or condition which resulted in death has failed to complete, sign, and return the medical certification as to the cause and circumstances of death to the funeral director or person acting as such, the funeral director or person acting as such shall be authorized to report such physician to the Georgia Composite Medical Board for discipline pursuant to Code Section 43-34-8.

(2) In any area in this state which is in a state of emergency as declared by the Governor due to an influenza pandemic, in addition to any other person authorized by law to complete and sign a death certificate, any registered professional nurse employed by a long-term care facility, advanced practice nurse, physician assistant, registered nurse employed by a home health agency, or nursing supervisor employed by a hospital shall be authorized to complete and sign the death certificate, provided that such person has access to the medical history of the case, such person views the deceased at or after death, the death is due to natural causes, and an inquiry is not required under Article 2 of Chapter 16 of Title 45, the "Georgia Death

Investigation Act.” In such a state of emergency, the death certificate shall be filed by the funeral director in accordance with subsection (b) of this Code section; or, if the certificate is not completed and signed by an appropriate physician or coroner, the public health director of preparedness shall cause the death certificate to be completed, signed, and filed by some other authorized person within ten days after death.

(d) When death occurs without medical attendance as set forth in subsection (c) of this Code section or when inquiry is required by Article 2 of Chapter 16 of Title 45, the “Georgia Death Investigation Act,” the proper person shall investigate the cause of death and shall complete and sign the medical certification portion of the death certificate within 30 days after being notified of the death.

(e) If the cause of death cannot be determined within 48 hours after death, the medical certification shall be completed as provided by regulation. The attending physician or coroner shall give the funeral director or person acting as such notice of the reason for the delay, and final disposition of the body shall not be made until authorized by the attending physician, coroner, or medical examiner.

(f) When death occurs on or after July 1, 1985, in a county other than the county of the residence of the deceased person, a copy of such person’s death certificate shall be forwarded as soon as practicable by the department to the custodian of records of the county of the residence of such deceased person. The custodian of records shall file such death certificate as a part of the permanent records of such office.

(g) Any other provision of this chapter or Chapter 16 of Title 45 notwithstanding, when the death of a nonresident burn victim occurs in a treatment facility following the transportation of such victim from an incident occurring in another state, only the attending physician shall be required to complete and sign the death certificate.

(h) On or before the tenth day of each month, the state registrar shall furnish to the Secretary of State’s office, in a format prescribed by the Secretary’s office, a list of those persons for whom death certificates have been filed during the preceding month. Such list shall be used by the Secretary of State to notify local registration officers for the purpose of purging the voter registration list of each county. (Ga. L. 1914, p. 157, § 7; Ga. L. 1927, p. 353, § 7; Code 1933, § 88-1214; Ga. L. 1945, p. 236, § 16; Ga. L. 1953, Jan.-Feb. Sess., p. 140, § 8; Code 1933, § 88-1715, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1967, p. 617, § 1; Code 1981, § 31-10-71; Ga. L. 1982, p. 723, § 1; Code 1981, § 31-10-15, enacted by Ga. L. 1982, p. 723, § 2; Ga. L. 1983, p. 3, § 22; Ga. L. 1985, p. 1417, § 1; Ga. L. 1991, p. 94, § 31; Ga. L. 1991, p. 669, § 5; Ga. L. 1992, p. 2758, § 1; Ga. L. 1996, p. 1201, § 1; Ga. L. 2004, p. 477, § 6; Ga. L.

2009, p. 81, § 1/HB 64; Ga. L. 2010, p. 752, § 1/SB 493; Ga. L. 2010, p. 878, § 31/HB 1387; Ga. L. 2010, p. 914, § 36/HB 540.)

The 2010 amendments. — The first 2010 amendment, effective July 1, 2010, redesignated former subsection (g) as subsection (h) and added present subsection (g). The second 2010 amendment, effective July 1, 2010, substituted “Code Section 43-34-8” for “Code Section 43-34-38” at the end of paragraph (c)(1). The third 2010 amendment, effective July 1, 2010, substituted “On or before the tenth day” for “By the twentieth day” at the beginning of present subsection (h).

Cross references. — Criminal penalty

for concealing death of person, § 16-10-31. “Georgia Death Investigation Act,” § 45-16-20 et seq.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2009, in paragraph (c)(1), “Georgia Composite Medical Board” was substituted for “Composite State Board of Medical Examiners” and “43-34-38” was substituted for “43-34-37” in the last sentence, and in paragraph (c)(2), “physician assistant” was substituted for “physician’s assistant” in the first sentence.

JUDICIAL DECISIONS

Editor’s notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 88-1212, and Ga. L. 1945, p. 236, § 18, subsequently codified as former Code 1933, § 88-1118, which were subsequently repealed but were succeeded by provisions of this Code section, are included in the annotations for this Code section.

Evidentiary effect of death certificate. — Certified copy of death certificate properly filed is no longer prima facie evidence of facts stated therein, and when facts stated therein are shown to result from statements made by others, such facts amount to hearsay. Under present law a certified copy of a duly filed death certificate is allowed in evidence only for purpose for which it was intended, that is, to show that person named therein is no longer in life. *Interstate Life & Accident Ins. Co. v. Wilmont*, 123 Ga. App. 337, 180 S.E.2d 913 (1971), criticized in *Allstate Ins. Co. v. Holcombe*, 132 Ga. App. 111, 207 S.E.2d 537 (1974).

Death certificate is prima facie evidence of facts therein stated, but presumption raised is rebuttable. *Allstate Ins. Co. v. Holcombe*, 132 Ga. App. 111, 207 S.E.2d 537 (1974).

Death certificate serves as prima facie evidence only of death and immediate agency of death, and other conclusions, such as those regarding events leading up to death or whether cause of death was

intentional or accidental, are not admissible. *King v. State*, 151 Ga. App. 762, 261 S.E.2d 485 (1979).

Death certificate raises rebuttable presumption as to cause of death. — Death certificate is prima facie evidence of cause of death, and though its introduction raises presumption as to cause of death it is a rebuttable presumption, and it is a question solely for decision by a fact finding body as to whether conflicting evidence is sufficient to rebut such presumption. *Ingraham v. Atlantic Co.*, 97 Ga. App. 359, 103 S.E.2d 58 (1958) (decided under former Ga. L. 1945, p. 236, § 18, subsequently codified as former Code 1933, § 88-1118).

Statement in death certificate stating cause of death is rebuttable. *McWaters v. Employers Liab. Assurance Corp.*, 73 Ga. App. 586, 37 S.E.2d 430 (1946) (decided under former Code 1933, § 88-1212).

Death certificate establishing prima facie case for collection under double indemnity policy. — Introduction of death certificate in which coroner assigned accidental suffocation as cause of death made out prima facie case on behalf of insured’s beneficiary in action to recover under double indemnity policy. *Family Fund Life Ins. Co. v. Wiley*, 91 Ga. App. 225, 85 S.E.2d 448 (1954) (decided under former Code 1933, §§ 88-1212 and 88-1118).

Certificate not made or filed as required not prima facie evidence of statements therein. — Certificate not made or filed as required is not prima facie evidence of statements therein contained, though admitted in evidence without objection. *Davison v. National Life & Accident Ins. Co.*, 106 Ga. App. 187, 126 S.E.2d 811 (1962) (decided under former Ga. L. 1945, p. 236, § 18, subsequently codified as former Code 1933, § 88-1118).

Presumption of discharge of duties by one performing required autopsy.

— Medical examiner acting under the Post Mortem Examinations Act (see Georgia Death Investigations Act, O.C.G.A. Art. 2, Ch. 16, T. 45) is a public officer and all public officers are presumed to discharge properly the duties of their office. Thus, in the absence of any allegations or evidence to the contrary, having shown that an autopsy was requested, it must be

presumed that a full and proper autopsy was performed, that the medical officer properly signed and filed the death certificate, and that it was done within a reasonable time as required by subsection (d) of this section. *National Life & Accident Ins. Co. v. Fender*, 146 Ga. App. 545, 247 S.E.2d 195 (1978) (see O.C.G.A. § 31-10-15).

Failure to file death certificates within 72-hour period did not render certificates inadmissible as hearsay when certified copies of the certificates were issued in accordance with O.C.G.A. § 31-10-26(a), although such copies constituted prima-facie evidence which raised a rebuttable presumption of truth of the facts stated therein. *Sherrer v. Lynn*, 172 Ga. App. 745, 324 S.E.2d 500 (1984).

Cited in *Smith v. State*, 143 Ga. App. 347, 238 S.E.2d 698 (1977).

OPINIONS OF THE ATTORNEY GENERAL

Funeral director's duty regarding medical certification of death. — It is the duty of the funeral director who first assumes custody of a dead body to obtain medical certification of cause of death; that medical certification should be completed and signed within 48 hours after death by a physician or the osteopath in charge of the patient's care for an illness or condition which resulted in death except when inquiry is required by the Post Mortem Examination Act (see Georgia Death Investigations Act, O.C.G.A. Art. 2, Ch. 16, T. 45). 1968 Op. Att'y Gen. No. 68-294.

Death certificate should be signed within reasonable time when no medical attendance. — If a post-mortem examination is not required under the circumstances and a person dies without medical attendance, medical certification of death should be signed within a reasonable time by a proper person (physician, osteopath, or medical examiner, as the case may be) who shall investigate the cause of death. 1968 Op. Att'y Gen. No.

68-294 (rendered prior to 1982 amendment).

When post-mortem or autopsy unnecessary. — Correlating Ga. L. 1953, Jan.-Feb. Sess., p. 602, §§ 5 and 8, former Code 1933, § 88-1715, no post-mortem or autopsy need be performed if the deceased was under the care of a physician and there was no evidence of violence or suicide; if the deceased was under the care of a physician it was not essential that the physician be present at instant of death to avoid the necessity of notifying the coroner. 1973 Op. Att'y Gen. No. U73-65.

Release of information on death certificates. — Federal Health Insurance Portability and Accountability Act, 42 U.S.C. § 1320d, does not prevent the release of information on copies of death certificates about the cause of death of an individual, as well as conditions leading to the person's death and information regarding surgical proceedings conducted on the deceased, if any, that are released under the Georgia Open Records Act, § 50-18-70 et seq. 2007 Op. Att'y Gen. No. 2007-4.

RESEARCH REFERENCES

Am. Jur. 2d. — 18 Am. Jur. 2d, Coroners or Medical Examiners, § 16. 39 Am. Jur. 2d, Health, § 108.

C.J.S. — 39A C.J.S., Health and Environment, §§ 74, 75.

ALR. — Death certificate as evidence, 96 ALR 324.

Presumption against suicide as over-

come by death certificate, coroner's verdict, or similar documentary evidence, 159 ALR 181.

Official death certificate as evidence of cause of death in civil or criminal action, 21 ALR3d 418.

Civil liability in conjunction with autopsy, 97 ALR5th 419.

31-10-16. Criteria for determining death; immunity from liability.

(a) A person may be pronounced dead by a qualified physician, by a registered professional nurse authorized to make a pronouncement of death under Code Section 31-7-176.1, or by a physician assistant authorized to make a pronouncement of death under subsection (j) of Code Section 43-34-103, if it is determined that the individual has sustained either (1) irreversible cessation of circulatory and respiratory function or (2) irreversible cessation of all functions of the entire brain, including the brain stem.

(b) A person who acts in good faith in accordance with the provisions of subsection (a) of this Code section shall not be liable for damages in any civil action or subject to prosecution in any criminal proceeding for such act.

(c) The criteria for determining death authorized in subsection (a) of this Code section shall be cumulative to and shall not prohibit the use of other medically recognized criteria for determining death. (Code 1933, § 88-1715.1, enacted by Ga. L. 1975, p. 1629, § 1; Code 1933, § 88-1716, enacted by Ga. L. 1982, p. 723, § 1; Code 1981, § 31-10-70; Code 1981, § 31-10-16, enacted by Ga. L. 1982, p. 723, § 2; Ga. L. 1992, p. 1392, § 3; Ga. L. 2009, p. 859, § 9/HB 509.)

Law reviews. — For article, "Baby Doe Cases: Compromise and Moral Dilemma," see 34 Emory L.J. 545 (1986).

For note, "Incubating for the State: The

Precarious Autonomy of Persistently Vegetative and Brain-Dead Pregnant Women," 22 Ga. L. Rev. 1103 (1988).

JUDICIAL DECISIONS

Cited in *State v. Williams*, 247 Ga. 200, 275 S.E.2d 62 (1981); *Clay v. State*, 256 Ga. 797, 353 S.E.2d 517 (1987).

RESEARCH REFERENCES

ALR. — Tests of death for organ transplant purposes, 76 ALR3d 913.

31-10-17. State registration of death certificates; certified copies; certificates of record.

(a) When a death certificate is filed with a local registrar, it shall be transmitted to the State Office of Vital Records for state registration immediately upon receipt. After registration and the assignment of a state file number, an authorized copy of the death certificate shall be returned to the local custodian. Certified copies of such death certificates may then be issued from the authorized copy by the local custodian.

(b) After a death certificate is filed with a local registrar, but before the death certificate has been registered by the State Office of Vital Records, the local custodian shall be authorized to issue copies of the death certificate to be known as a "certificate of record." Each certificate of record shall have printed thereon the following: "This is an exact copy of the death certificate received for filing in _____ County." Such certificate of record shall be signed by the local custodian and have the correct seal affixed thereto. (Code 1933, § 88-1715.1, enacted by Ga. L. 1976, p. 677, § 1; Code 1933, § 88-1717, enacted by Ga. L. 1982, p. 723, § 1; Code 1981, § 31-10-72; Code 1981, § 31-10-17, enacted by Ga. L. 1982, p. 723, § 2; Ga. L. 2004, p. 477, § 7.)

JUDICIAL DECISIONS

Special legislation regarding salary for probate judges does not prohibit a probate judge from receiving compensa-

tion for serving as the custodian of vital records. *Porter v. Calhoun County*, 250 Ga. 566, 300 S.E.2d 143 (1983).

RESEARCH REFERENCES

ALR. — Official death certificate as evidence of cause of death in civil or criminal action, 21 ALR3d 418.

31-10-18. Registration of spontaneous fetal deaths.

(a) A report of spontaneous fetal death for each spontaneous fetal death which occurs in this state shall be filed with the local registrar of the county in which the delivery occurred within 72 hours after such delivery in accordance with this Code section unless the place of fetal death is unknown, in which case a fetal death certificate shall be filed in the county in which the dead fetus was found within 72 hours after such occurrence. All induced terminations of pregnancy shall be reported in the manner prescribed in Code Section 31-10-19. Preparation and filing of reports of spontaneous fetal death shall be as follows:

(1) When a dead fetus is delivered in an institution, the person in charge of the institution or that person's designated representative shall prepare and file the report;

(2) When a dead fetus is delivered outside an institution, the physician in attendance at or immediately after delivery shall prepare and file the report;

(3) When a spontaneous fetal death required to be reported by this Code section occurs without medical attendance at or immediately after the delivery or when inquiry is required by Article 2 of Chapter 16 of Title 45, the "Georgia Death Investigation Act," the proper investigating official shall investigate the cause of fetal death and shall prepare and file the report within 30 days; and

(4) When a spontaneous fetal death occurs in a moving conveyance and the fetus is first removed from the conveyance in this state or when a dead fetus is found in this state and the place of fetal death is unknown, the fetal death shall be reported in this state. The place where the fetus was first removed from the conveyance or the dead fetus was found shall be considered the place of fetal death.

(b) The medical certification portion of the fetal death report shall be completed and signed within 48 hours after delivery by the physician in attendance at or after delivery except when inquiry or investigation is required by Article 2 of Chapter 16 of Title 45, the "Georgia Death Investigation Act."

(c) The name of the father shall be entered on the spontaneous fetal death report in accordance with the provisions of Code Section 31-10-9. (Ga. L. 1945, p. 236, § 17; Ga. L. 1953, Jan.-Feb. Sess., p. 140, § 9; Code 1933, § 88-1716, enacted by Ga. L. 1964, p. 499, § 1; Code 1933, § 88-1718, enacted by Ga. L. 1982, p. 723, § 1; Code 1981, § 31-10-74; Code 1981, § 31-10-18, enacted by Ga. L. 1982, p. 723, § 2; Ga. L. 2005, p. 60, § 31/HB 95.)

OPINIONS OF THE ATTORNEY GENERAL

Certificate of legal abortion will not replace fetal death certificate. 1973 Op. Att'y Gen. No. 73-71.

Fetal death occurs when abortion is performed. — When a doctor has induced an abortion by any currently used abortion procedure, a fetal death occurs;

therefore, both a fetal death certificate and a certificate of abortion must be filed; however, if fetal death is caused by a spontaneous abortion or miscarriage, it would only be necessary to file a fetal death certificate. 1973 Op. Att'y Gen. No. 73-71.

RESEARCH REFERENCES

ALR. — Official death certificate as evidence of cause of death in civil or criminal action, 21 ALR3d 418.

31-10-19. Reporting of induced termination of pregnancy.

Each induced termination of pregnancy which occurs in this state, regardless of the length of gestation or weight, shall be reported directly to the department within ten days by the person in charge of the institution or clinic, or designated representative, in which the induced termination of pregnancy was performed. If the induced termination of pregnancy was performed outside an institution or clinic, the attending physician shall prepare and file the report within the time specified by this Code section. (Code 1933, § 88-1719, enacted by Ga. L. 1982, p. 723, § 1; Code 1981, § 31-10-19, enacted by Ga. L. 1982, p. 723, § 2.)

Administrative rules and regulations. — Performance of abortions after the first trimester of pregnancy and reporting requirements for all abortions, Official Compilation of the Rules and Regu-

lations of the State of Georgia, Department of Human Resources (now the Department of Community Health for these purposes), Public Health, Chapter 290-5-32.

31-10-20. Permits for disposition, disinterment, and reinterment.

(a) The funeral director or person acting as such or other person who first assumes custody of a dead body or fetus shall obtain a disposition permit for cremation or removal from the state. A disposition permit may be required within the state by local authorities.

(b) Such disposition permit shall be made available by the local registrar of the county where the death or fetal death occurred, or body or fetus was found, 24 hours a day, seven days a week. The registrar will issue a disposition permit immediately upon request from the licensed funeral director or his agent in charge of the body or fetus. The request for a disposition permit may be received by the registrar either orally or in writing. The registrar may respond to the request by any means utilized in the normal course of transacting business including, but not limited to, transmission by facsimile machine.

(c) A disposition permit issued under the law of another state which accompanies a dead body or fetus brought into this state shall be authority for final disposition of the body or fetus in this state.

(d) Prior to final disposition of a dead fetus, irrespective of the duration of pregnancy, the funeral director or person acting as such, the person in charge of the institution, or other person assuming responsibility for final disposition of the fetus shall obtain from the parent(s) authorization for final disposition.

(e) Disposition permits shall not be required where disposition of fetal remains is within the institution of occurrence and a registry of such events is maintained by the institution.

(f) Authorization for disinterment and reinterment shall be required prior to disinterment of a dead body or fetus. Such authorization shall be issued by the local registrar to a licensed funeral director or other person acting as such, upon proper application, in the county in which the dead body or dead fetus was originally interred and a local registrar who issues such authorization shall not be civilly or criminally liable therefor if it is issued in good faith. A permit shall not be required when disinterment and reinterment are in the same cemetery.

(g) The department shall prescribe rules and regulations so that the local registrars may permit hospitals, funeral homes, or others in their respective counties to issue disposition permits. (Ga. L. 1927, p. 353, § 5; Code 1933, § 88-1213; Ga. L. 1945, p. 236, § 27; Ga. L. 1953, Jan.-Feb. Sess., p. 140, § 13; Ga. L. 1960, p. 1130, § 1; Code 1933, § 88-1717, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1975, p. 1179, § 3; Ga. L. 1976, p. 677, § 2; Code 1933, § 88-1720, enacted by Ga. L. 1982, p. 723, § 1; Code 1981, § 31-10-75; Code 1981, § 31-10-20, enacted by Ga. L. 1982, p. 723, § 2; Ga. L. 1983, p. 732, § 2; Ga. L. 1991, p. 669, § 6; Ga. L. 1992, p. 2758, § 2.)

JUDICIAL DECISIONS

Code section applies to all disinterments and reinterments. — This section contains no express exceptions. In its terms, the statute applies to all disinterments and reinterments, subject only to such reasonable rules and regulations as may be promulgated. *Westview Cem. v. Blanchard*, 234 Ga. 540, 216 S.E.2d 776 (1975) (see O.C.G.A. § 31-10-20).

Procuring permit held not ground for trespass action. — Funeral establishment's assistance to a next-of-kin in procuring a disinterment permit did not subject the establishment to liability for trespass or intentional infliction of emotional distress in an action brought by relatives of the deceased. *Edwards v. A.S. Turner & Sons*, 181 Ga. App. 105, 351 S.E.2d 505 (1986).

Executor's authority. — If an executor has any duty or authority relating to burial or disposition of a body, that duty or authority terminates after initially discharging any such obligation in accordance with the testamentary direction, and, thereafter, disinterment and reburial may be sought by the surviving spouse, or by the next of kin in the absence of a surviving spouse under O.C.G.A. § 31-10-20. *Welch v. Welch*, 269 Ga. 742, 505 S.E.2d 470 (1998).

Cited in *Blanchard v. Westview Cem.*, 133 Ga. App. 262, 211 S.E.2d 135 (1974); *Welch v. Welch*, 244 Ga. App. 685, 536 S.E.2d 583 (2000).

RESEARCH REFERENCES

ALR. — Removal and reinterment of remains, 21 ALR2d 472.

Dead bodies: liability for improper manner of reinterment, 53 ALR4th 394.

31-10-21. Record of marriage licenses.

(a) A record of each marriage performed in this state shall be filed with the department and shall be registered if it has been completed and filed in accordance with this Code section.

(b) The official who issues the marriage license shall cause to be prepared the record on the application supplement-marriage report form, including at a minimum the information set out in subsection (b) of Code Section 19-3-33, upon the basis of information obtained from both of the parties to be married.

(c) A person who performs a marriage shall certify the fact of marriage and return the license to the official who issued the license within ten days after the ceremony. The license shall be completed as prescribed by regulations of the department.

(d) Every official issuing marriage licenses shall complete and forward to the department on or before the tenth day of each calendar month an application supplement-marriage report form for each marriage license returned to such official during the preceding calendar month. Such forms may be transmitted in the form of paper or electronically.

(e) The official issuing a marriage license shall keep the original of the application and license for the county records from which the official may issue certified copies but need not retain the prepared application supplement-marriage report forms except to the extent necessary for transmission of such forms to the registrar and confirmation of transmission or receipt.

(f) In addition to the fee provided by Code Section 15-9-60, the official shall be entitled to a filing fee of \$1.00 to be paid by the applicant upon application for the marriage license. (Ga. L. 1945, p. 236, §§ 34, 35; Ga. L. 1952, p. 103, §§ 5, 6; Code 1933, § 88-1719, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1969, p. 959, § 1; Code 1933, § 88-1721, enacted by Ga. L. 1982, p. 723, § 1; Code 1981, § 31-10-50; Code 1981, § 31-10-21, enacted by Ga. L. 1982, p. 723, § 2; Ga. L. 1997, p. 1592, § 4; Ga. L. 1998, p. 128, § 31.)

Cross references. — Issuance of marriage licenses generally, § 19-3-30 et seq.

RESEARCH REFERENCES

Am. Jur. 2d. — 29A Am. Jur. 2d, Evidence, § 1313 et seq. 39 Am. Jur. 2d, Health, § 52. 52 Am. Jur. 2d, Marriage, § 37.

31-10-22. Record of divorces, dissolutions, and annulments.

(a) A record of each divorce, dissolution of marriage, or annulment granted by any court of competent jurisdiction in this state shall be filed by the clerk of the court with the department and shall be registered if it has been completed and filed in accordance with this Code section. The record shall be prepared by the petitioner or the petitioner's legal representative on a form prescribed and furnished by the state registrar and shall be presented to the clerk of the court with the petition. In all cases, the completed record shall be a prerequisite to the granting of the final decree.

(b) The clerk of the superior court shall complete and forward to the department on or before the tenth day of each calendar month the records of each divorce, dissolution of marriage, or annulment decree granted during the preceding calendar month. (Ga. L. 1945, p. 236, § 36; Ga. L. 1952, p. 103, § 8; Ga. L. 1953, Jan.-Feb. Sess., p. 534, §§ 1, 2; Code 1933, § 88-1720, enacted by Ga. L. 1964, p. 499, § 1; Code 1933, § 88-1722, enacted by Ga. L. 1982, p. 723, § 1; Code 1981, § 31-10-51; Code 1981, § 31-10-22, enacted by Ga. L. 1982, p. 723, § 2; Ga. L. 1996, p. 6, § 31.)

Cross references. — Annulment of marriage generally, T. 19, C. 4. Divorce generally, T. 19, C. 5.

RESEARCH REFERENCES

Am. Jur. 2d. — 24 Am. Jur. 2d, Divorce and Separation, § 362. 52 Am. Jur. 2d, Marriage, § 107. **C.J.S.** — 27A C.J.S., Divorce, § 230 et seq.

31-10-23. Amendment of certificates or reports.

(a) Unless otherwise specified by law, a certificate or report registered under this chapter may be amended in accordance with this chapter and regulations adopted by the department to protect the integrity and accuracy of vital records. Such regulations shall specify the minimum evidence required for a change in any certificate or report. Amendments to birth certificates, death certificates, and application supplement-marriage reports shall be completed by the department and a copy mailed to the proper local custodian, if any. Amendments to applications for a marriage license or the license shall be completed by the judge of the probate court of the county in which the license was issued. An amendment to divorce reports shall be completed by the clerk of the superior court of the county in which the decree was granted.

(b) A certificate or report that is amended under this Code section shall be marked "amended," except as otherwise provided in this Code section. The date of amendment and a summary description of the evidence submitted in support of the amendment shall be endorsed on or made a part of the record. The department shall prescribe by regulation the conditions under which additions or minor corrections may be made to certificates or records within one year after the date of the event without the certificate or record being marked "amended."

(c)(1) Upon receipt of a certified copy of an order to legitimate a child, or an affidavit signed by the natural parents whose marriage had legitimated a child, the director shall register a new birth certificate if paternity was not shown on the original certificate. Such certificate shall not be marked "amended."

(2) If paternity was shown on the original certificate, the record can be changed only by an order from a court of competent jurisdiction or the Office of State Administrative Hearings to remove the name of the person shown on the certificate as the father and to add the name of the natural father and to show the child as the legitimate child of the person so named. The order must specify the name to be removed and the name to be added.

(d) Upon receipt of a certified copy of an order from a superior court, probate court, or other court of competent jurisdiction changing the name of a person born in this state and upon request of such person or such person's parents, guardian, temporary guardian, or legal representative, the state registrar shall amend the certificate of birth to show the new name. When the names of the parent or parents and the child are changed, the state registrar may register a new certificate if requested by the parents, guardian, temporary guardian, or legal representative. Such new certificate shall be marked "amended."

(e) Upon receipt of a certified copy of a court order indicating the sex of an individual born in this state has been changed by surgical procedure and that such individual's name has been changed, the certificate of birth of such individual shall be amended as prescribed by regulation.

(f) An order from a superior court or probate court shall be required to change the year of birth shown on the original birth certificate by more than one year or to correct any item on a delayed birth certificate, or to remove the name of a father from a birth certificate on file. The person seeking such change, correction, or removal shall institute the proceeding by filing a petition with the appropriate court in the county of residence for an order changing the year of birth, correcting a delayed birth certificate, or removing the name of the father from a birth certificate on file. Such petition shall set forth the reasons therefor and

shall be accompanied by all available documentary evidence. The court shall set a date for hearing the petition and shall give the state registrar at least ten days' notice of said hearing. The state registrar or the authorized representative thereof may appear and testify in the proceeding. If the court from the evidence presented finds that such change, correction, or removal should be made, the judge shall issue an order setting out the change to be made and the date of the court's action. The clerk of such court shall forward the petition and order to the state registrar not later than the tenth day of the calendar month following the month in which said order was entered. Such order shall be registered by the state registrar and the change so ordered shall be made.

(g) When an applicant does not submit the minimum documentation required in the regulations for amending a vital record or when the state registrar has reasonable cause to question the validity or adequacy of the applicant's sworn statements or the documentary evidence and if the deficiencies are not corrected, the state registrar shall not amend the vital record and shall advise the applicant of the reason for this action and shall further advise the applicant of the right of judicial appeal.

(h) When a certificate or report is amended under this Code section, the state registrar shall report the amendment to the proper local custodian and their record shall be amended accordingly. (Code 1933, § 88-1721, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1969, p. 715, § 1; Ga. L. 1975, p. 855, § 1; Ga. L. 1975, p. 1179, § 4; Ga. L. 1976, p. 1062, § 1; Code 1933, § 88-1723, enacted by Ga. L. 1982, p. 723, § 1; Code 1981, § 31-10-12; Code 1981, § 31-10-23, enacted by Ga. L. 1982, p. 723, § 2; Ga. L. 1991, p. 94, § 31; Ga. L. 1991, p. 669, § 7; Ga. L. 1997, p. 1592, § 5; Ga. L. 2004, p. 477, § 8; Ga. L. 2004, p. 915, § 4.)

Cross references. — Legitimacy proceedings, § 19-7-20 et seq. Proceedings for determination of paternity of child,

§ 19-7-40 et seq. Form of certificate of change of name, § 19-12-3. Issuance of new birth certificate, § 31-10-14.

OPINIONS OF THE ATTORNEY GENERAL

Authority of probate judge. — Although a probate judge clearly has the authority to remove the name of the father from a birth certificate on file, this section does not authorize the probate court to substitute the name of the actual father on the certificate of birth. 1978 Op. Att'y Gen. No. U78-12 (see O.C.G.A. § 31-10-23).

When a putative father's name has been removed from a child's birth certificate, after the presentation of competent evidence to an appropriate court, the child's name on that certificate should be changed so as to give the child the legal surname of the child's mother, the only legally acknowledged parent. 1982 Op. Att'y Gen. No. U82-42.

RESEARCH REFERENCES

Am. Jur. 2d. — 66 Am. Jur. 2d, Records and Recording Laws, § 65.

C.J.S. — 76 C.J.S., Records, §§ 24 et seq., 98.

31-10-24. Preservation or disposition of vital records; certified reproductions; preserved originals and authorized reproductions as property of department.

(a) The department is responsible for the preservation or disposition of all vital records at state or county offices. To preserve vital records, the state registrar is authorized to prepare typewritten, photographic, electronic, or other reproductions of certificates or reports in the State Office of Vital Records. Such reproductions when certified by the state registrar or the local custodian shall be accepted as the original records for all purposes. The documents from which permanent reproductions have been made and verified may be preserved or disposed of as provided by regulation.

(b) All preserved original or authorized reproductions by the state and local custodians remain the property of the department. Such original or authorized reproductions shall be surrendered to the department when so ordered. (Ga. L. 1945, p. 236, § 20; Ga. L. 1953, Jan.-Feb. Sess., p. 140, § 10; Code 1933, § 88-1722, enacted by Ga. L. 1964, p. 499, § 1; Code 1933, § 88-1724, enacted by Ga. L. 1982, p. 723, § 1; Code 1981, § 31-10-11; Code 1981, § 31-10-24, enacted by Ga. L. 1982, p. 723, § 2; Ga. L. 2004, p. 477, § 11.)

JUDICIAL DECISIONS

Death certificate established unavailability of witness. — Copy of a deceased witness's death certificate signed and certified by the county custodian and the state vital records registrar, pursuant to O.C.G.A. § 31-10-24, consti-

tuted prima facie evidence of the fact that the witness was no longer alive, and admission of the deceased witness's statement was proper. *Brite v. State*, 278 Ga. 893, 608 S.E.2d 204 (2005).

31-10-25. Disclosure of information contained in vital records; transfer of records to State Archives.

(a) To protect the integrity of vital records, to ensure their proper use, and to ensure the efficient and proper administration of the system of vital records, it shall be unlawful for any person to permit inspection of, or to disclose information contained in vital records or to copy or issue a copy of all or part of any such record except as authorized by this chapter and by regulation or by order of a court of competent jurisdiction. Regulations adopted under this Code section shall provide for adequate standards of security and confidentiality of vital records. The provisions of this subsection shall not apply to court records or indexes

of marriage licenses, divorces, and annulments of marriages filed as provided by law.

(b) The department shall authorize by regulation the disclosure of information contained in vital records for research purposes.

(c) Appeals from decisions of custodians of vital records, as designated under authority of Code Section 31-10-6, who refuse to disclose information or to permit inspection or copying of records as prescribed by this Code section and regulations issued under this Code section shall be made to the state registrar whose decisions shall be binding upon such custodians.

(d) Information in vital records indicating that a birth occurred out of wedlock shall not be disclosed except as provided by regulation or upon the order of a court of competent jurisdiction.

(e) When 100 years have elapsed after the date of birth or 75 years have elapsed after the date of death or application for marriage, or divorce, dissolution of marriage, or annulment, the records of these events in the custody of the state registrar shall be transferred to the State Archives and such information shall be made available in accordance with regulations which shall provide for the continued safekeeping of the records.

(f) Official copies of records of deaths, applications for marriages and marriage certificates, divorces, dissolutions of marriages, and annulments located in the counties shall remain accessible to the public. While in the temporary custody of the probate court before transmission to the state registrar or confirmation of transmission or receipt, application supplement-marriage report forms shall not be available for public inspection or copying or admissible in any court of law. (Ga. L. 1945, p. 236, § 24; Ga. L. 1953, Jan.-Feb. Sess., p. 140, § 12; Code 1933, § 88-1723, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1965, p. 651, § 2; Code 1933, § 88-1725, enacted by Ga. L. 1982, p. 723, § 1; Code 1981, § 31-10-13; Code 1981, § 31-10-25, enacted by Ga. L. 1982, p. 723, § 2; Ga. L. 1997, p. 1592, § 6.)

Cross references. — Opening of public records to inspection by members of public, § 50-18-70 et seq.

OPINIONS OF THE ATTORNEY GENERAL

Copies of marriage applications open to public. — Official copies of marriage applications kept on file in the office of the probate court must remain accessible to the public, including credit exchanges. 1983 Op. Att'y Gen. No. U83-17.

Access to department's vital re-

cords files should not be denied to newspaper representatives. 1970 Op. Att'y Gen. No. 70-1.

Providing information from death certificates to newspapers. — Local custodians of vital records may, upon request, provide information to newspapers

from death certificates retained in the local custodian's office. 1984 Op. Att'y Gen. No. 84-3.

Department may prescribe fees to cover cost of furnishing information.

— Department of Public Health (now De-

partment of Human Resources) may prescribe fees to cover the cost of supervising inspections or furnishing lists of births and deaths to news reporters. 1970 Op. Att'y Gen. 70-1.

RESEARCH REFERENCES

Am. Jur. 2d. — 66 Am. Jur. 2d, Records and Recording Laws, § 17 et seq.

C.J.S. — 76 C.J.S., Records, §§ 44 et seq., 112 et seq., 123 et seq., 126 et seq.

31-10-26. (Effective until January 1, 2013. See note.) Certified copies of vital records; issuance; evidentiary effect; use for statistical purposes; transmittal of records out of state; use for commercial or speculative purposes.

(a) In accordance with Code Section 31-10-25 and the regulations adopted pursuant thereto:

(1) The state registrar or local custodian of vital records appointed by the state registrar to issue certified copies upon receipt of a written application shall issue a certified copy of a vital record in that registrar's or custodian's custody or abstract thereof to any applicant having a direct and tangible interest in the vital record, except that certified copies of certificates shall only be issued to:

(A) The person whose record of birth is registered;

(B) Either parent, guardian, or temporary guardian of the person whose record of birth or death is registered;

(C) The living legal spouse or next of kin or the legal representative or the person who in good faith has applied and produced a record of such application to become the legal representative of the person whose record of birth or death is registered;

(D) The court of competent jurisdiction upon its order or subpoena; or

(E) Any governmental agency, state or federal, provided that such certificate shall be needed for official purposes.

(2) Each certified copy issued shall show the date of registration and copies issued from records marked "delayed" or "amended" shall be similarly marked and show the effective date. The documentary evidence used to establish a delayed certificate of birth shall be shown on all copies issued. All forms and procedures used in the issuance of certified copies of vital records in the state shall be provided or approved by the state registrar.

(b) A certified copy of a vital record or any part thereof, issued in accordance with subsection (a) of this Code section, shall be considered

for all purposes the same as the original and shall be prima-facie evidence of the facts stated therein, provided that the evidentiary value of a certificate or record filed more than one year after the event, or a record which has been amended, shall be determined by the judicial or administrative body or official before whom the certificate is offered as evidence.

(c) The federal agency responsible for national vital statistics may be furnished such copies or data from the system of vital records as it may require for national statistics, provided such federal agency shares in the cost of collecting, processing, and transmitting such data and provided further that such data shall not be used for other than statistical purposes by the federal agency unless so authorized by the state registrar.

(d) The state registrar may, by agreement, transmit copies of records and other reports required by this chapter to offices of vital records outside this state when such records or other reports relate to residents of those jurisdictions or persons born in those jurisdictions. The agreement shall require that the copies be used for statistical and administrative purposes only and the agreement shall further provide for the retention and disposition of such copies. Copies received by the department from offices of vital statistics in other states shall be handled in the same manner as prescribed in this Code section.

(e) No person shall prepare or issue any certificate which purports to be an original, certified copy or copy of a vital record except as authorized in this chapter or regulations adopted under this chapter.

(f) No copies or parts thereof of a vital record shall be reproduced or information copies for commercial or speculative purposes. This subsection shall not apply to published results of research. (Ga. L. 1914, p. 157, § 20; Ga. L. 1927, p. 353, § 20; Ga. L. 1931, p. 7, §§ 16, 17; Ga. L. 1933, p. 7, § 1; Code 1933, § 88-1212; Code 1933, § 88-1724, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1965, p. 651, § 3; Ga. L. 1969, p. 715, § 2; Code 1933, § 88-1726, enacted by Ga. L. 1982, p. 723, § 1; Code 1981, § 31-10-14; Code 1981, § 31-10-26, enacted by Ga. L. 1982, p. 723, § 2; Ga. L. 1991, p. 94, § 31; Ga. L. 2004, p. 477, § 9.)

Editor's notes. — Code Section 2013, and the second version becomes 31-10-26 is set out twice in this Code. The first version is effective until January 1, effective on that date.

JUDICIAL DECISIONS

Subsection (b) of this section is in derogation of common law and must be strictly construed. *Evans v. DeKalb County Hosp. Auth.*, 154 Ga. App. 17, 267 S.E.2d 319 (1980) (see O.C.G.A. § 31-10-26).

Subsection (b) of this section amounts to exception to hearsay rule.

— Evidence admitted under subsection (b) of this section is hearsay evidence; thus, this provision amounts to an exception to the hearsay rule. *Liberty Nat'l Life Ins. Co. v. Power*, 112 Ga. App. 547, 145 S.E.2d 801 (1965) (see O.C.G.A. § 31-10-26).

Death certificate not inadmissible even though not filed within statutory time period.

— Failure to file death certificates within 72-hour period required by O.C.G.A. § 31-10-15(a) did not render certificates inadmissible as hearsay when certified copies of the certificates were issued in accordance with subsection (a) of O.C.G.A. § 31-10-26, although such copies constituted prima-facie evidence which raised a rebuttable presumption of truth of the facts stated therein. *Sherrer v. Lynn*, 172 Ga. App. 745, 324 S.E.2d 500 (1984).

Evidentiary effect of death certificate. — Death certificate is prima facie evidence of facts therein stated but presumption raised is rebuttable. *Allstate Ins. Co. v. Holcombe*, 132 Ga. App. 111, 207 S.E.2d 537 (1974).

Death certificate serves as prima facie evidence only of death and immediate agency of death, and other conclusions, such as those regarding events leading up to death or whether cause of death was intentional or accidental, are not admissible. *King v. State*, 151 Ga. App. 762, 261 S.E.2d 485 (1979).

Certified copy of death certificate properly filed is no longer prima facie evidence of facts stated therein, and when facts stated therein are shown to result from statements made by others, such facts amount to hearsay. Under present law, a certified copy of a duly filed death certificate is allowed in evidence only for the purpose for which it was intended, that is, to show that the person named therein is no longer in life. *Interstate Life & Accident Ins. Co. v. Wilmont*, 123 Ga. App. 337, 180 S.E.2d 913 (1971), criticized in *Allstate Ins. Co. v. Holcombe*, 132 Ga. App. 111, 207 S.E.2d 537 (1974).

Certified copy of birth certificate shall be prima facie evidence only of facts therein contained and such evidence may be rebutted. It was therefore compe-

tent for the state to introduce a birth certificate to prove that a witness was under 14 years of age, and to further prove by parol evidence that the record contained an error as to the witness' race and that of the witness' parents. *Cunningham v. State*, 85 Ga. App. 216, 68 S.E.2d 614 (1952).

Introduction of death certificate appropriate.

— Introduction of a death certificate in which the coroner assigned accidental suffocation as the cause of death made out a prima facie case on behalf of the insured's beneficiary in an action to recover under a double indemnity policy. *Family Fund Life Ins. Co. v. Wiley*, 91 Ga. App. 225, 85 S.E.2d 448 (1954).

Statement in death certificate stating cause of death is rebuttable.

McWaters v. Employers Liab. Assurance Corp., 73 Ga. App. 586, 37 S.E.2d 430 (1946).

Certificate not completed in accordance with requirements not prima facie evidence of facts stated therein.

— Being in derogation of common law, this statute must be strictly construed. When certificate is not completed in accordance with statutory requirements, it is not prima facie evidence of facts stated therein. *Liberty Nat'l Life Ins. Co. v. Power*, 112 Ga. App. 547, 145 S.E.2d 801 (1965).

Matters for which death certificate not admissible to prove.

— Under rule of strict construction that must be applied to this section, a death certificate is not admissible to prove particular matters stated in the certificate: (1) if the statement is based on hearsay and not upon personal knowledge of a physician or official completing certificate; or (2) if the statement is one of opinion to which a physician or official would not be qualified to testify personally. In these instances, statements contained in the certificate are not statements of fact within the meaning of the statute and an exception to the hearsay rule is inapplicable. *Liberty Nat'l Life Ins. Co. v. Power*, 112 Ga. App. 547, 145 S.E.2d 801 (1965) (see O.C.G.A. § 31-10-26).

Cited in *Branton v. Independent Life & Accident Ins. Co.*, 136 Ga. App. 414, 221

S.E.2d 217 (1975); *Huskins v. State*, 245 Ga. 541, 266 S.E.2d 163 (1980).

RESEARCH REFERENCES

C.J.S. — 76 C.J.S., Records, §§ 74 et seq., 112 et seq. evidence of cause of death in civil or criminal action, 21 ALR3d 418.

ALR. — Official death certificate as

31-10-26. (Effective January 1, 2013. See note.) Certified copies of vital records; issuance; use for statistical purposes; transmittal of records out of state; use for commercial or speculative purposes.

(a) In accordance with Code Section 31-10-25 and the regulations adopted pursuant thereto:

(1) The state registrar or local custodian of vital records appointed by the state registrar to issue certified copies upon receipt of a written application shall issue a certified copy of a vital record in that registrar's or custodian's custody or abstract thereof to any applicant having a direct and tangible interest in the vital record, except that certified copies of certificates shall only be issued to:

(A) The person whose record of birth is registered;

(B) Either parent, guardian, or temporary guardian of the person whose record of birth or death is registered;

(C) The living legal spouse or next of kin or the legal representative or the person who in good faith has applied and produced a record of such application to become the legal representative of the person whose record of birth or death is registered;

(D) The court of competent jurisdiction upon its order or subpoena; or

(E) Any governmental agency, state or federal, provided that such certificate shall be needed for official purposes.

(2) Each certified copy issued shall show the date of registration and duplicates issued from records marked "delayed" or "amended" shall be similarly marked and show the effective date. The documentary evidence used to establish a delayed certificate of birth shall be shown on all duplicates issued. All forms and procedures used in the issuance of certified copies of vital records in this state shall be provided or approved by the state registrar.

(b) The federal agency responsible for national vital statistics may be furnished such duplicates or data from the system of vital records as it may require for national statistics, provided such federal agency shares

in the cost of collecting, processing, and transmitting such data and provided further that such data shall not be used for other than statistical purposes by the federal agency unless so authorized by the state registrar.

(c) The state registrar may, by agreement, transmit duplicates of records and other reports required by this chapter to offices of vital records outside this state when such records or other reports relate to residents of those jurisdictions or persons born in those jurisdictions. The agreement shall require that the duplicates be used for statistical and administrative purposes only and the agreement shall further provide for the retention and disposition of such duplicates. Duplicates received by the department from offices of vital statistics in other states shall be handled in the same manner as prescribed in this Code section.

(d) No person shall prepare or issue any certificate which purports to be an original, certified copy or duplicate of a vital record except as authorized in this chapter or regulations adopted under this chapter.

(e) No duplicates or parts thereof of a vital record shall be reproduced or information copied for commercial or speculative purposes. This subsection shall not apply to published results of research. (Ga. L. 1914, p. 157, § 20; Ga. L. 1927, p. 353, § 20; Ga. L. 1931, p. 7, §§ 16, 17; Ga. L. 1933, p. 7, § 1; Code 1933, § 88-1212; Code 1933, § 88-1724, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1965, p. 651, § 3; Ga. L. 1969, p. 715, § 2; Code 1933, § 88-1726, enacted by Ga. L. 1982, p. 723, § 1; Code 1981, § 31-10-14; Code 1981, § 31-10-26, enacted by Ga. L. 1982, p. 723, § 2; Ga. L. 1991, p. 94, § 31; Ga. L. 2004, p. 477, § 9; Ga. L. 2011, p. 99, § 43/HB 24.)

The 2011 amendment, effective January 1, 2013, substituted “duplicates” for “copies” throughout this Code section; substituted “this state” for “the state” in the middle of the last sentence of paragraph (a)(2); deleted former subsection (b), which read: “A certified copy of a vital record or any part thereof, issued in accordance with subsection (a) of this Code section, shall be considered for all purposes the same as the original and shall be prima-facie evidence of the facts stated therein, provided that the evidentiary value of a certificate or record filed more than one year after the event, or a record which has been amended, shall be determined by the judicial or administrative body or official before whom the certificate is offered as evidence.”; redesignated former subsections (c) through (f) as present subsections (b) through (e), respectively; substituted “Duplicates” for “Copies” at

the beginning of the last sentence of present subsection (c); substituted “duplicate” for “copy” in the middle of present subsection (d); and substituted “copied” for “copies” near the end of the first sentence of present subsection (e). See editor’s note for applicability.

Editor’s notes. — Code Section 31-10-26 is set out twice in this Code. The first version is effective until January 1, 2013, and the second version becomes effective on that date.

Ga. L. 2011, p. 99, § 101/HB 24, not codified by the General Assembly, provides that this Act shall apply to any motion made or hearing or trial commenced on or after January 1, 2013.

Law reviews. — For article, “Evidence,” see 27 Ga. St. U.L. Rev. 1 (2011). For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 1 (2011).

31-10-27. Fees for copies or services.

(a) The department shall prescribe uniform fees to be paid to the State Office of Vital Records, local registrars, and local custodians for certified copies of certificates or records, for a search of the files or records, for copies or information provided for research, statistical, or administrative purposes, or for other services. The fee for each search or service, certified copy, or record shall be determined by the board.

(b) Fees collected by the department under this Code section shall be deposited in the general funds of the state.

(c) Fees for copies or searches by local custodians of vital records shall be retained by them whether the local custodian is paid on a fee basis, a salary basis, or a combination of both, except in counties where the local custodian of vital records is an employee of the county board of health, in which case said fees shall be remitted monthly to the county health department. (Ga. L. 1945, p. 236, §§ 21, 22; Ga. L. 1953, Jan.-Feb. Sess., p. 140, § 11; Code 1933, § 88-1725, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1967, p. 541, § 1; Code 1933, § 88-1727, enacted by Ga. L. 1982, p. 723, § 1; Code 1981, § 31-10-15; Code 1981, § 31-10-27, enacted by Ga. L. 1982, p. 723, § 2; Ga. L. 2004, p. 477, § 10.)

Cross references. — Providing of marital, birth, divorce, or death records free of

charge to veterans, Veterans' Administration, and others, § 38-1-1.

JUDICIAL DECISIONS

Sole exception for employees of the county board of health from the general rule that local custodians shall keep their fees clearly infers that the General Assembly meant to include other custodians in the general rule, notwithstanding any other offices the employees might have held. *Porter v. Calhoun County*, 250 Ga. 566, 300 S.E.2d 143 (1983) (construing former similar provisions).

Fees paid to custodian of vital records. — One who is both the probate judge and custodian of vital records of a county is entitled to keep fees paid to the person as custodian of vital records and the county is not entitled to such fees. *Porter v. Calhoun County*, 250 Ga. 566, 300 S.E.2d 143 (1983) (construing former similar provisions).

OPINIONS OF THE ATTORNEY GENERAL

Fees for acting passport agents. — Salaried clerks of superior court may re-

tain execution fees for acting as passport agents. 1983 Op. Att'y Gen. No. U83-24.

RESEARCH REFERENCES

Am. Jur. 2d. — 66 Am. Jur. 2d, Records and Recording Laws, §§ 20, 59.

C.J.S. — 76 C.J.S., Records, §§ 81, 144.

31-10-28. Institutions to keep vital records.

(a) Every person in charge of an institution shall keep a record of personal data concerning each person admitted or confined to such institution. This record shall include such information as required for the certificates of birth and death and the reports of spontaneous fetal death and induced termination of pregnancy required by this chapter. The record shall be made at the time of admission from information provided by the person being admitted or confined but, when it cannot be so obtained, the information shall be obtained from relatives or other persons acquainted with the facts. The name and address of the person providing the information shall be a part of the record.

(b) When a dead body or dead fetus is released or disposed of by an institution, the person in charge of the institution shall keep a record showing the name of the decedent or parents of the fetus, date of death, name and address of the person to whom the body or fetus is released, and the date of removal from the institution. If final disposition is made by the institution, the date, place, and manner of disposition shall also be recorded.

(c) A funeral director, embalmer, sexton, or other person who removes from the place of death, transports, or makes final disposition of a dead body or fetus, in addition to filing any certificate or other report required by this chapter or regulations promulgated hereunder, shall keep a record which shall identify the body and such information pertaining to receipt, removal, delivery, burial, or cremation of such body as may be required by regulations adopted by the department.

(d) Records maintained under this Code section shall be retained for a period of not less than three years and shall be made available for inspection by the state registrar or the state registrar's representative upon demand. (Ga. L. 1927, p. 353, § 11; Code 1933, § 88-1220; Ga. L. 1945, p. 236, § 26; Code 1933, § 88-1726, enacted by Ga. L. 1964, p. 499, § 1; Code 1933, § 88-1728, enacted by Ga. L. 1982, p. 723, § 1; Code 1981, § 31-10-10; Code 1981, § 31-10-28, enacted by Ga. L. 1982, p. 723, § 2.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1991, a comma was inserted following "institution" near the beginning of subsection (b).

31-10-29. Privileged nature of disclosures; notification of local registrar of institutional deaths and fetal deaths; notification of board of voting registrars of adult deaths.

(a) Any person having knowledge or facts concerning any birth, death, spontaneous fetal death, marriage, induced termination of pregnancy, divorce, dissolution of marriage, or annulment may disclose

such facts to the state registrar, and such disclosure shall be absolutely privileged and no cause or action may be brought or maintained against such person for such disclosure.

(b) Not later than the tenth day of the month following the month of occurrence, the administrator of each institution or that administrator's designated representative shall send to the local vital records registrar a list showing all deaths and fetal deaths occurring in that institution during the preceding month.

(c) Upon receipt of a death certificate by any local vital records registrar of any person 18 years of age or older, the local registrar shall notify the board of voting registrars in the county of the decedent's residence of the name and address of such decedent. If the records of the local registrar reflect that the decedent was a resident of another or other counties within the five years preceding the decedent's death, the local registrar shall also send such information to the board of voting registrars of such county or counties. (Code 1933, § 88-1729, enacted by Ga. L. 1982, p. 723, § 1; Code 1981, § 31-10-29, enacted by Ga. L. 1982, p. 723, § 2; Ga. L. 1984, p. 22, § 31; Ga. L. 1991, p. 669, § 8.)

31-10-30. Posting facts of death to birth certificates.

(a) To protect the integrity of vital records and to prevent the fraudulent use of birth certificates of deceased persons, the state registrar is authorized to match birth and death certificates, in accordance with written standards promulgated by the state registrar to prove beyond a reasonable doubt the fact of death and to post the facts of death to the appropriate birth certificate and index. Copies issued from birth certificates marked deceased shall be similarly marked.

(b) When a death occurs in this state for which a death certificate must be filed in accordance with Code Section 31-10-15, and the decedent's birth certificate is on file at the state office of vital records, the state registrar shall mark that deceased person's birth certificate with the word "Deceased." The state registrar shall notify the custodian of vital records of the county where the decedent was born that the deceased individual's birth certificate has been marked "Deceased." (Code 1933, § 88-1730, enacted by Ga. L. 1982, p. 723, § 1; Code 1981, § 31-10-30, enacted by Ga. L. 1982, p. 723, § 2; Ga. L. 1996, p. 1201, § 2.)

RESEARCH REFERENCES

Am. Jur. 2d. — 66 Am. Jur. 2d, Records and Recording Laws, § 13 et seq.

C.J.S. — 76 C.J.S., Records, § 29.

31-10-31. Penalties.

(a) A fine of not more than \$10,000.00 or imprisonment of not more than five years, or both, shall be imposed on:

(1) Any person who willfully and knowingly makes any false statement in a certificate, record, or report required by this chapter, or in an application for an amendment thereof, or in an application for a certified copy of a vital record or who willfully and knowingly supplies false information intending that such information be used in the preparation of any such report, record, or certificate, or amendment thereof;

(2) Any person who without lawful authority and with the intent to deceive makes, counterfeits, alters, amends, or mutilates any certificate, record, or report required by this chapter or a certified copy of such certificate, record, or report;

(3) Any person who willfully and knowingly obtains, possesses, uses, sells, furnishes, or attempts to obtain, possess, use, sell, or furnish to another, for any purpose of deception, any certificate, record, or report required by this chapter or certified copy thereof so made, counterfeited, altered, amended, or mutilated or which is false in whole or in part or which relates to the birth of another person, whether living or deceased;

(4) Any employee of the State Office of Vital Records, or appointed local registrar or local custodian or special abstracting agent who willfully and knowingly furnishes or processes a certificate of birth, or certified copy of a certificate of birth, with the knowledge or intention that it be used for the purposes of deception; or

(5) Any person who without lawful authority possesses any certificate, record, or report required by this chapter or a copy or certified copy of such certificate, record, or report knowing same to have been stolen or otherwise unlawfully obtained.

(b) A fine not more than \$1,000.00 or imprisonment of not more than one year, or both, shall be imposed on:

(1) Any person who willfully and knowingly refuses to provide information required by this chapter or regulations adopted hereunder;

(2) Any person who willfully and knowingly transports or accepts for transportation, interment, or other disposition a dead body without an accompanying permit as provided in this chapter;

(3) Any person who willfully and knowingly neglects or violates any of the provisions of this chapter or refuses to perform any of the

duties imposed upon such person by this chapter. (Ga. L. 1927, p. 353, § 21; Code 1933, § 88-9929; Ga. L. 1945, p. 236, § 38; Code 1933, § 88-1727, enacted by Ga. L. 1964, p. 499, § 1; Code 1933, § 88-1731, enacted by Ga. L. 1982, p. 723, § 1; Code 1981, § 31-10-16; Code 1981, § 31-10-31, enacted by Ga. L. 1982, p. 723, § 2; Ga. L. 1992, p. 6, § 31; Ga. L. 2004, p. 477, § 11.)

31-10-32. Extension of periods for filing of certificates or reports.

The department may, by regulation and upon such conditions as it may prescribe to assure compliance with the purposes of this chapter, provide for the extension of the periods for the filing of certificates or reports. (Code 1933, § 88-1718, enacted by Ga. L. 1964, p. 499, § 1; Code 1933, § 88-1732, enacted by Ga. L. 1982, p. 723, § 1; Code 1981, § 31-10-9; Code 1981, § 31-10-32, enacted by Ga. L. 1982, p. 723, § 2.)

31-10-33. Procedure for stillbirth.

(a) For any stillborn child in this state, the State Office of Vital Records shall, within 60 days of a request by a parent named on a fetal death certificate or other eligible person as provided for in subsection (h) of this Code section, issue a certificate of birth resulting in stillbirth.

(b) The person who is required to file a fetal death certificate under Code Section 31-10-18 shall advise the parent of a stillborn child:

(1) That the parent may request the preparation of a certificate of birth resulting in stillbirth in addition to the fetal death certificate;

(2) That the parent may obtain a certificate of birth resulting in stillbirth by contacting the State Office of Vital Records;

(3) How the parent may contact the State Office of Vital Records to request a certificate of birth resulting in stillbirth; and

(4) That a copy of the original certificate of birth resulting in stillbirth is a document that is available as a vital record when held by the state registrar system.

(c) The request for a certificate of birth resulting in stillbirth shall be on a form prescribed by the state registrar pursuant to Code Section 31-10-7.

(d) The certificate of birth resulting in stillbirth shall contain:

(1) The date of the stillbirth;

(2) The county in which the stillbirth occurred;

(3) The name of the stillborn child as provided on the original or amended certificate of the fetal death certificate. If a name does not

appear on the original or amended fetal death certificate and the requesting parent does not wish to provide a name, the State Office of Vital Records shall fill in the certificate of birth resulting in stillbirth with the name "baby boy" or "baby girl" and the last name of the parents;

(4) The state file number of the corresponding fetal death certificate; and

(5) The following statement: "This certificate is not proof of live birth."

(e) The certificate of birth resulting in stillbirth shall also contain:

(1) Gender;

(2) Place of delivery;

(3) Residence of mother;

(4) The attendant at delivery;

(5) Gestational age at delivery;

(6) Weight at delivery;

(7) Mother's name;

(8) Father's name;

(9) Time of delivery; and

(10) Type of delivery, including but not limited to single, twin, or triplet.

(f) A certificate of birth resulting in stillbirth shall be a vital record when held by the state registrar system. The State Office of Vital Records shall inform any parent who requests a certificate of birth resulting in stillbirth that a copy of the document is available as a vital record.

(g) A parent may request that the State Office of Vital Records issue a certificate of birth resulting in stillbirth regardless of the date on which the certificate of fetal death was issued.

(h) Those individuals who are entitled to request a certificate of birth resulting in stillbirth are:

(1) Either parent of the stillborn child listed on the vital record;

(2) A grandparent of the stillborn child;

(3) An adult brother or sister of the stillborn child;

(4) A legal representative of the parent; and

(5) A court of competent jurisdiction.

(i) The State Office of Vital Records shall not use a certificate of birth resulting in stillbirth to calculate live birth statistics.

(j) This Code section shall not be used to establish, bring, or support a civil cause of action seeking damages against any person or entity for bodily injury, personal injury, or wrongful death for a stillbirth.

(k) The state registrar shall prescribe by rules pursuant to Code Section 31-10-5 the form, content, and process for the certificate of birth resulting in stillbirth. (Code 1981, § 31-10-33, enacted by Ga. L. 2008, p. 585, § 3/SB 381.)

Editor's notes. — Ga. L. 2008, p. 585, § 1/SB 381, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'No Heart-beat Act.'"

CHAPTER 11

EMERGENCY MEDICAL SERVICES

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 31-11-116. Annual reports.
 31-11-117. Statutory construction.
 31-11-118. Advertising.
 31-11-119. Rules and regulations.

Administrative rules and regulations. — Emergency Medical Services, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Community Health, Public Health, Chapter 111-9-2.

Paramedics and cardiac technicians,

Official Compilation of the Rules and Regulations of the State of Georgia, Composite State Board of Medical Examiners, Chapter 360-11.

Law reviews. — For annual survey of administrative law, see 38 Mercer L. Rev. 17 (1986).

JUDICIAL DECISIONS

Law sets high standards for licensing providers of ambulance service and provides for enforcement and regulation of those standards through adminis-

trative action. *Anderson v. Little & Davenport Funeral Home*, 242 Ga. 751, 251 S.E.2d 250 (1978).

RESEARCH REFERENCES

Am. Jur. Proof of Facts. — Negligent Operation of Emergency Vehicle, 10 POF3d 203.

ALR. — Liability for personal injury or property damage from operation of ambulance, 84 ALR2d 121.

Liability for injury or death allegedly caused by activities of hospital "rescue team", 64 ALR4th 1200.

Liability of operator of ambulance service for personal injuries to person being transported, 68 ALR4th 14.

ARTICLE 1

GENERAL PROVISIONS

Cross references. — Criminal penalty § 16-10-29. Required equipment for emergency vehicles, § 40-8-90 et seq.
for knowingly requesting ambulance service when no reasonable need exists,

31-11-1. Findings; declaration of policy.

(a) The General Assembly finds and determines:

(1) That the furnishing of emergency medical services is a matter of substantial importance to the people of this state;

(2) That the cost and quality of emergency medical services are matters within the public interest;

(3) That it is highly desirable for the state to participate in emergency medical systems communications programs established pursuant to Public Law 93-154, entitled the Emergency Medical Services Systems Act of 1973;

(4) That the administration of an emergency medical systems communications program should be the responsibility of the Department of Public Health, acting upon the recommendations of the local entity which coordinates the program; all ambulance services shall be a part of this system even if this system is the 9-1-1 emergency telephone number;

(5) That an emergency medical systems communications program in a health district should be operated as economically and efficiently as possible to serve the public welfare and, to achieve this goal, should involve the designation of geographical territories to be serviced by participating ambulance providers and should involve an economic and efficient procedure to distribute emergency calls among participating ambulance providers serving the same health district; and

(6) Any first responder falls under the department's rules and regulations governing ambulances and can transport only in life-threatening situations or by orders of a licensed physician or when a licensed ambulance cannot respond.

(b) The General Assembly therefore declares that, in the exercise of the sovereign powers of the state to safeguard and protect the public health and general well-being of its citizens, it is the public policy of this state to encourage, foster, and promote emergency medical systems communications programs and that such programs shall be accomplished in a manner that is coordinated, orderly, economical, and

without unnecessary duplication of services and facilities. (Code 1933, § 88-3100, enacted by Ga. L. 1978, p. 1068, § 1; Ga. L. 2005, p. 660, § 3/HB 470; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214.)

The 2011 amendment, effective July 1, 2011, substituted “Department of Public Health” for “Department of Community Health” in paragraph (a)(4).

Cross references. — Emergency telephone number “9-1-1” system, § 46-5-120 et seq.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2005, the subsection (a) designation preceding paragraph (a)(4) was deleted.

Editor’s notes. — The Emergency

Medical Services Systems Act of 1973, P.L. 93-154, referred to in paragraph (a)(3), was repealed by P.L. 99-117 and P.L. 99-129. The Georgia Emergency Medical Systems Communication Program, however, was established pursuant to that Act prior to its repeal. Therefore, the reference in this Code section to that Act is being retained for historical purposes.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

31-11-2. Definitions.

As used in this chapter, the term:

(1) “Air ambulance” means any rotary-wing aircraft used or intended to be used for hire for transportation of sick or injured persons who may need medical attention during transport.

(1.1) “Air ambulance service” means the for-hire providing of emergency care and transportation by means of an air ambulance for an injured or sick person to or from a place where medical or hospital care is furnished.

(1.2) “Ambulance” means a motor vehicle that is specially constructed and equipped or an air ambulance and is intended to be used for the emergency transportation of patients, including dual purpose police patrol cars and funeral coaches or hearses which otherwise comply with the provisions of this chapter.

(2) “Ambulance attendant” means a person responsible for the care of patients being transported in an ambulance.

(3) “Ambulance provider” means an agency or company providing ambulance service which is operating under a valid license from the Emergency Health Section of the Department of Public Health.

(4) “Ambulance service” means:

(A) The providing of emergency care and transportation on the public streets and highways of this state for a wounded, injured, sick, invalid, or incapacitated human being to or from a place where medical or hospital care is furnished;

(B) The provision of any air ambulance service; or

(C) The provision of services specified in subparagraphs (A) and (B) of this paragraph.

(5) "Cardiac technician" means a person who, having been trained and certified as an emergency medical technician and having completed additional training in advanced cardiac life support techniques in a training course approved by the department, is so certified by the Composite State Board of Medical Examiners, now known as the Georgia Composite Medical Board, prior to January 1, 2002, or the Department of Human Resources (now known as the Department of Public Health for these purposes) on and after January 1, 2002.

(6) "Composite board" means the Georgia Composite Medical Board.

(6.1) "Department" means the Department of Public Health.

(7) "Emergency medical services system" means a system which provides for the arrangement of personnel, facilities, and equipment for the effective and coordinated delivery in an appropriate geographical area of health care services under emergency conditions, occurring either as a result of the patient's condition or as a result of natural disasters or similar situations, and which is administered by a public or nonprofit private entity which has the authority and the resources to provide effective administration of the system.

(8) "Emergency Medical Systems Communications Program" (EMSC Program) means any program established pursuant to Public Law 93-154, entitled the Emergency Medical Services Systems Act of 1973, which serves as a central communications system to coordinate the personnel, facilities, and equipment of an emergency medical services system and which:

(A) Utilizes emergency medical telephonic screening;

(B) Utilizes a publicized emergency telephone number; and

(C) Has direct communication connections and interconnections with the personnel, facilities, and equipment of an emergency medical services system.

(9) "Emergency medical technician" means a person who has been certified by the department after having successfully completed an emergency medical care training program approved by the department.

(10) "First responder" means any person or agency who provides on-site care until the arrival of a duly licensed ambulance service.

(11) "Health districts" means the geographical districts designated by the department in accord with Code Section 31-3-15.

(12) “Invalid car” means a motor vehicle not used for emergency purposes but used only to transport persons who are convalescent, sick, or otherwise nonambulatory.

(13) “License” when issued to an ambulance service signifies that its facilities and operations comply with this chapter and the rules and regulations issued by the department hereunder.

(14) “License officer” means the commissioner of public health or his designee.

(15) “Local coordinating entity” means the public or nonprofit private entity designated by the Board of Public Health or its designee to administer and coordinate the EMSC Program in a health district established in accord with Code Section 31-3-15.

(16) “Paramedic” means any person who has been certified by the composite board before January 1, 2002, or by the department on or after January 1, 2002, as having been trained in emergency care techniques in a paramedic training course approved by the department.

(16.1) “Paramedic clinical preceptor” means a Georgia certified paramedic with a minimum of two years of emergency medical services experience who meets the standard requirements for paramedic preceptor training as established by the department.

(17) “Patient” means an individual who is sick, injured, wounded, or otherwise incapacitated or helpless.

(18) “Person” means any individual, firm, partnership, association, corporation, company, group of individuals acting together for a common purpose, or organization of any kind, including any governmental agency other than of the United States.

(19) “Provisional license” when issued to an ambulance service means a license issued on a conditional basis to allow a newly established ambulance service a period of 30 days to demonstrate that its facilities and operations comply with this chapter and rules and regulations issued by the department under this chapter. (Code 1933, § 88-3101, enacted by Ga. L. 1972, p. 625, § 1; Ga. L. 1977, p. 281, § 1; Ga. L. 1978, p. 1068, § 2; Ga. L. 1985, p. 149, § 31; Ga. L. 1988, p. 1923, § 1; Ga. L. 1989, p. 1782, § 1; Ga. L. 2001, p. 1145, § 1; Ga. L. 2003, p. 304, § 1; Ga. L. 2009, p. 453, §§ 1-5, 1-6, 1-35/HB 228; Ga. L. 2009, p. 859, § 10/HB 509; Ga. L. 2011, p. 705, §§ 5-15, 6-4, 6-5/HB 214.)

The 2011 amendment, effective July 1, 2011, substituted “Department of Public Health” for “Division of Public Health of the Department of Community Health”

in paragraph (3); substituted “Department of Public Health” for “Department of Community Health” in paragraphs (5) and (6.1); substituted “commissioner of public

health" for "commissioner of community health" in paragraph (14); and substituted "Board of Public Health" for "Board of Community Health" in paragraph (15).

Editor's notes. — The Emergency Medical Services Systems Act of 1973, P.L. 93-154, referred to in paragraph (8), was repealed by P.L. 99-117 and P.L. 99-129. The Georgia Emergency Medical Systems

Communications Program, however, was established pursuant to that Act prior to its repeal. Therefore, the reference in this Code section to that Act is being retained for historical purposes.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

OPINIONS OF THE ATTORNEY GENERAL

Use of ambulance by Department of Veterans Service. — So long as the Department of Veterans Service operates the Department's ambulance with the intention to transport persons who are convalescent, sick, or otherwise nonambulatory

and not for emergency purposes, then provisions of this section would not be applicable; it would not be necessary for the Department to remove support equipment from the ambulance. 1973 Op. Att'y Gen. No. 73-143 (see O.C.G.A. § 31-11-2).

31-11-3. Recommendations by local coordinating entity as to administration of EMSC Program; hearing and appeal.

(a) The Board of Public Health shall have the authority on behalf of the state to designate and contract with a public or nonprofit local entity to coordinate and administer the EMSC Program for each health district designated by the Department of Public Health. The local coordinating entity thus designated shall be responsible for recommending to the board or its designee the manner in which the EMSC Program is to be conducted. In making its recommendations, the local coordinating entity shall give priority to making the EMSC Program function as efficiently and economically as possible. Each licensed ambulance provider in the health district shall have the opportunity to participate in the EMSC Program.

(b) The local coordinating entity shall request from each licensed ambulance provider in its health district a written description of the territory in which it can respond to emergency calls, based upon the provider's average response time from its base location within such territory; and such written description shall be due within ten days of the request by the local coordinating entity.

(c) After receipt of the written descriptions of territory in which the ambulance providers propose to respond to emergency calls, the local coordinating entity shall within ten days recommend in writing to the board or its designee the territories within the health district to be serviced by the ambulance providers; and at this same time the local coordinating entity shall also recommend the method for distributing emergency calls among the providers, based primarily on the considerations of economy, efficiency, and benefit to the public welfare. The recommendation of the local coordinating entity shall be forwarded

immediately to the board or its designee for approval or modification of the territorial zones and method of distributing calls among ambulance providers participating in the EMSC Program in the health district.

(d) The board, or its designee, is empowered to conduct a hearing into the recommendations made by the local coordinating entity, and such hearing shall be conducted according to the procedures set forth in Code Section 31-5-2.

(e) The recommendations of the local coordinating entity shall not be modified unless the board or its designee shall find, after a hearing, that the determination of the district health director is not consistent with operation of the EMSC Program in an efficient, economical manner that benefits the public welfare. The decision of the board or its designee shall be rendered as soon as possible and shall be final and conclusive concerning the operation of the EMSC Program; and appeal from such decision shall be pursuant to Code Section 31-5-3.

(f) The local coordinating entity shall begin administering the EMSC Program in accord with the decision by the board or its designee immediately after the decision by the board or its designee regarding the approval or modification of the recommendations made by the local coordinating entity; and the EMSC Program shall be operated in such manner pending the resolution of any appeals filed pursuant to Code Section 31-5-3.

(g) This Code section shall not apply to air ambulances or air ambulance services. (Code 1933, § 88-3116, enacted by Ga. L. 1978, p. 1068, § 3; Ga. L. 2003, p. 304, § 2; Ga. L. 2009, p. 453, §§ 1-4, 1-5/HB 228; Ga. L. 2011, p. 705, §§ 6-3, 6-4/HB 214.)

The 2011 amendment, effective July 1, 2011, in the first sentence of subsection (a), substituted “Board of Public Health” for “Board of Community Health” near the beginning, and substituted “Department

of Public Health” for “Department of Community Health” near the end.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

JUDICIAL DECISIONS

Summary judgment against board’s designee in error. — Since the decision by the designee of the Board of Human Resources to exclude licensed private ambulance service from automatic routing of emergency calls took numerous factors into account and based the board’s decision upon hotly contested facts, there were genuine issues of material fact and the trial court erred in awarding summary judgment against the designee. *DeKalb County v. Metro Ambulance*

Servs., Inc., 253 Ga. 561, 322 S.E.2d 881 (1984).

Breadth of standard of review. — Although the language of O.C.G.A. § 31-11-3 is phrased as a mandatory directive to the designee, the statute does not purport to confine the designee to the same limited standard of review to which the judiciary is confined respecting administrative decisions, nor does the statute overcome the constitutional proscription against plenary judicial review of

such decisions. *DeKalb County v. Metro Ambulance Servs., Inc.*, 253 Ga. 561, 322 S.E.2d 881 (1984).

Even though “fairness” is not an enumerated criterion of O.C.G.A. § 31-11-3, the specific factual inquiry made by the Board of Human Resources’ designee concerning the double burden of citizens’ funding local emergency medical services as well as paying private ambulance service’s fees fell within the board’s discretion to take into consideration the factors of economy and efficiency so as to benefit local citizens. *DeKalb County v. Metro Ambulance Servs., Inc.*, 253 Ga. 561, 322 S.E.2d 881 (1984).

Term “shall have an opportunity to participate” should be construed in pari materia with the mandatory statutory criteria of efficiency, economy, and public welfare, and the extent of a private ambulance service’s participation in the automatic funneling of emergency calls is contingent upon the Board of Human Resources designee’s discretionary determination of how best to fulfill the statutory criteria. *DeKalb County v. Metro Ambulance Servs., Inc.*, 253 Ga. 561, 322 S.E.2d 881 (1984).

OPINIONS OF THE ATTORNEY GENERAL

Trauma advisory committee as review organization under § 31-7-131(3). — Since the Trauma Advisory Committee for Emergency Medical Services is a review organization consisting of surgeons licensed in the State of Georgia which evaluates care provided by professional health care providers as defined in O.C.G.A.

§ 31-7-131(2) for the purposes of improving the quality of care rendered and reducing morbidity and mortality due to trauma, it is a review organization within the meaning of § 31-7-131(3) and is covered by the immunity and confidentiality provisions of O.C.G.A. §§ 31-7-132 and 31-7-133. 1988 Op. Att’y Gen. No. 88-5.

31-11-4. Supervision and modifications of EMSC Program.

The board or its designee shall exercise continuing supervision over the operations of the EMSC Program in each health district and shall make all necessary modifications in accord with the procedures set forth in Code Section 31-11-3. (Code 1933, § 88-3117, enacted by Ga. L. 1978, p. 1068, § 4.)

31-11-5. Rules and regulations.

(a) The department is authorized to adopt and promulgate rules and regulations for the protection of the public health:

- (1) Prescribing reasonable health, sanitation, and safety standards for transporting patients in ambulances;
- (2) Prescribing reasonable conditions under which ambulance attendants are required;
- (3) Establishing criteria for the training of ambulance attendants; and
- (4) The emergency medical technician course is to be offered at area hospitals and area technical vocational schools in conjunction with their emergency patient care and personnel training programs.

(b) Nothing in this Code section shall authorize the department to adopt and promulgate rules or regulations which shall prevent the continued use of dual purpose funeral coaches or hearses currently being used as ambulances if the vehicles otherwise conform in all respects to the requirements of Code Section 31-11-34, except for their size and shape. (Code 1933, § 88-3112, enacted by Ga. L. 1972, p. 625, § 1; Ga. L. 2003, p. 304, § 3.)

OPINIONS OF THE ATTORNEY GENERAL

Requiring two emergency medical technicians on ambulance. — Regulation requiring that two emergency medical technicians be present in an ambulance while transporting a patient is

consistent with the authority of the Department of Human Resources stated in O.C.G.A. § 31-11-5. 1988 Op. Att’y Gen. No. U88-4.

31-11-6. Records.

Records of each ambulance trip shall be made by the ambulance service in a manner and on such forms as may be prescribed by the department through regulations. Such records shall be available for inspection by the department at any time, and a summary of ambulance service activities shall be prepared on specific cases and furnished to the department upon request. (Code 1933, § 88-3108, enacted by Ga. L. 1972, p. 625, § 1.)

OPINIONS OF THE ATTORNEY GENERAL

Disclosure of trip reports to department. — Regulation requiring that copies of ambulance trip reports be furnished to the Department of Human Resources is

not violative of O.C.G.A. § 31-11-6 and does not breach the confidentiality of the patient. 1988 Op. Att’y Gen. No. U88-4.

31-11-7. Exercise of emergency vehicle privileges by ambulance drivers.

The driver of an ambulance on the public streets, highways, and private access roads of this state, when responding to an emergency call or while transporting a patient, is authorized to operate the ambulance as an emergency vehicle pursuant to Code Section 40-6-6. (Code 1933, § 88-3109, enacted by Ga. L. 1972, p. 625, § 1; Ga. L. 2003, p. 304, § 4.)

Cross references. — Yielding of right of way to authorized emergency vehicles, § 40-6-74. Duty of pedestrians to yield

right of way to authorized vehicles, § 40-6-99.

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 184, 222, 230. 8 Am. Jur. 2d, Automobiles and Highway Traffic, §§ 611, 723, 954 et seq. 40 Am. Jur. 2d, Highways, Streets, and Bridges, § 588 et seq.

C.J.S. — 60 C.J.S., Motor Vehicles, §§ 31, 46. 60A C.J.S., Motor Vehicles, §§ 518 et seq., 557, 623, 756, 757. 60A C.J.S., Motor Vehicles, §§ 765, 766. 61A C.J.S., Motor Vehicles, § 1440.

31-11-8. Liability of persons rendering emergency care; liability of physicians advising ambulance service pursuant to Code Section 31-11-50; limitation to gratuitous services.

(a) Any person, including agents and employees, who is licensed to furnish ambulance service and who in good faith renders emergency care to a person who is a victim of an accident or emergency shall not be liable for any civil damages to such victim as a result of any act or omission by such person in rendering such emergency care to such victim.

(b) A physician shall not be civilly liable for damages resulting from that physician's acting as medical adviser to an ambulance service, pursuant to Code Section 31-11-50, if those damages are not a result of that physician's willful and wanton negligence.

(c) The immunity provided in this Code section shall apply only to those persons who perform the aforesaid emergency services for no remuneration. (Code 1933, § 88-3114, enacted by Ga. L. 1972, p. 625, § 1; Ga. L. 1982, p. 692, §§ 1, 2.)

Cross references. — Statement of emergency vehicle driver's duty of care with regard to other drivers and pedestrians in operation of vehicle, §§ 40-6-74, 40-6-99. Liability of persons rendering emergency care generally, § 51-1-29.

Law reviews. — For article surveying

judicial and legislative developments in Georgia's tort laws, see 31 Mercer L. Rev. 229 (1979).

For comment, "Good Samaritan Laws—Legal Disarray: An Update," see 38 Mercer L. Rev. 1439 (1987).

JUDICIAL DECISIONS

Legislative intent behind this section, see *Anderson v. Little & Davenport Funeral Home*, 242 Ga. 751, 251 S.E.2d 250 (1978) (see O.C.G.A. § 31-11-8).

This section is definite and certain in the statute's meaning. Men of common intelligence would not differ as to application of the statute's provisions. *Anderson v. Little & Davenport Funeral Home*, 242 Ga. 751, 251 S.E.2d 250 (1978) (see O.C.G.A. § 31-11-8).

Immunity granted only as to acts or

omissions in rendering emergency care. — This section is carefully drawn so as to grant immunity to providers of ambulance service only for their acts and omissions in rendering such emergency care. *Anderson v. Little & Davenport Funeral Home*, 242 Ga. 751, 251 S.E.2d 250 (1978) (see O.C.G.A. § 31-11-8).

Ambulance service was not entitled to emergency care providers' immunity under O.C.G.A. § 31-11-8(a) because the ambulance did not render emergency care,

but rather, it was the ambulance's inability to provide prompt emergency care that formed the basis of a lawsuit alleging damage from a delay in emergency transport. *Crewley v. Am. Med. Response of Ga., Inc.*, 303 Ga. App. 258, 692 S.E.2d 851 (2010).

Code section only applies to rendition of health care. — Trial court erred in charging O.C.G.A. § 31-11-8 when liability was not founded upon the rendition of health care but was based upon the intentional torts of assault and robbery because an ambulance attendant removed the passenger/plaintiff's ring. *Bricks v. Metro Ambulance Serv., Inc.*, 177 Ga. App. 62, 338 S.E.2d 438 (1985).

Immunity not extended to negligence causing motor vehicle accident. — Legislature saw fit not to extend immunity to negligence of ambulance driver for injuries resulting from motor vehicle accidents. *Anderson v. Little & Davenport Funeral Home*, 242 Ga. 751, 251 S.E.2d 250 (1978).

Immunity requires that one act in good faith. — Once licensed, providers of ambulance service are granted immunity from civil liability provided, however, emergency care is rendered in good faith. *Anderson v. Little & Davenport Funeral Home*, 242 Ga. 751, 251 S.E.2d 250 (1978) (see O.C.G.A. § 31-11-8).

Because the totality of the paramedics' actions showed that the paramedics acted in good faith with the intent to save the decedent's life, O.C.G.A. § 31-11-8 provided immunity against liability for the paramedics' conduct. *Thomas v. DeKalb County*, 227 Ga. App. 186, 489 S.E.2d 58 (1997).

Since plaintiff presented no evidence that defendants, emergency medical technicians, believed the defendant's conduct was unconscionable or that the circumstances required further investigation, even if the defendants exercised bad judgment and acted negligently, such conduct did not amount to a lack of good faith and, accordingly, the trial court did not err in granting summary judgment to the defendants. *Bixler v. Merritt*, 244 Ga. App. 82, 534 S.E.2d 837 (2000).

Paramedic was an employee of the county emergency medical services, which

was licensed to provide ambulance services and the administratrix did not present any evidence suggesting that defendants did not act in good faith; viewing the evidence in the light most favorable to the administratrix, the evidence showed, at best, that the defendants exercised bad judgment and acted negligently in caring for the decedent but this was not enough to show a lack of good faith for purposes of statutory immunity. Further, immunity under O.C.G.A. § 31-11-8 applied despite the fact that the defendants charged a fee to defray the administrative costs of patient transportation. *Presley v. City of Blackshear*, 650 F. Supp. 2d 1307 (S.D. Ga. 2008).

Paramedic who examined an arrestee who appeared ill was entitled to immunity under O.C.G.A. § 31-11-8 as to state law negligence claims asserted by the administratrix of the arrestee's estate after the arrestee died due to ingestion of crack cocaine, of which the paramedic was unaware, because the administratrix alleged mere negligence on the part of the paramedic in failing to conduct a complete examination of the arrestee, which was insufficient to show that the paramedic acted without good faith. *Presley v. City of Blackshear*, No. 09-10501, 2009 U.S. App. LEXIS 18029 (11th Cir. Aug. 7, 2009) (Unpublished).

Code section treats all recipients of treatment by ambulance service in same way. — This section is uniform in that the statute treats all persons who receive emergency medical treatment from providers of a licensed ambulance service in the same way. *Anderson v. Little & Davenport Funeral Home*, 242 Ga. 751, 251 S.E.2d 250 (1978) (see O.C.G.A. § 31-11-8).

No remuneration for performance of emergency cases. — Municipality received no remuneration within the meaning of subsection (c) of O.C.G.A. § 31-11-8 for the performance of emergency services when the municipality levied a transportation charge against those persons transported to a hospital. A fee charged by a governmental organization to assist in defraying the administrative costs of transporting a person to a hospital is not the equivalent of receiving remuneration for

providing emergency care. *Ramsey v. City of Forest Park*, 204 Ga. App. 98, 418 S.E.2d 432 (1992).

There is no requirement under O.C.G.A. § 31-11-8(c) that the “emergency services” rendered specifically denote medical intervention; the immunity provided in § 31-11-8 shall apply only to those persons who perform the aforesaid emergency services for no remuneration. *Martin v. Fulton-Dekalb Hosp. Auth.*, 250 Ga. App. 663, 551 S.E.2d 415 (2001).

Fee charged by a governmental organization to assist in defraying the administrative costs of transporting a person to a hospital is not the equivalent of receiving remuneration for providing stated emergency care within the meaning of O.C.G.A. § 31-11-8(c). *Presley v. City of Blackshear*, 650 F. Supp. 2d 1307 (S.D. Ga. 2008).

Paramedic who examined an arrestee who appeared ill was entitled to immunity under O.C.G.A. § 31-11-8 as to state law negligence claims asserted by the administratrix of the arrestee’s estate after the arrestee died due to ingestion of crack cocaine, of which the paramedic was unaware, because the paramedic acted with good faith and without remuneration; there was no evidence that the arrestee’s estate was billed for paramedic services, even if the administratrix was billed for the ambulance transportation and mileage. *Presley v. City of Blackshear*, No. 09-10501, 2009 U.S. App. LEXIS 18029 (11th Cir. Aug. 7, 2009) (Unpublished).

Fees for transportation and mileage do not constitute remuneration under O.C.G.A. § 31-11-8(c). *Presley v. City of Blackshear*, No. 09-10501, 2009 U.S. App. LEXIS 18029 (11th Cir. Aug. 7, 2009) (Unpublished).

County and ambulance crew members entitled to immunity. — Trial court did not err when the court granted summary judgment to a county and ambulance crew members on the ground that the members were entitled to immunity under O.C.G.A. § 31-11-8 in a wrongful death action because as a “person” licensed to provide “emergency care” the county was entitled to immunity for the alleged misconduct of the county’s employees, the county never charged the decedent or the decedent’s spouse for the crew’s first visit to the house, which was the occasion when the alleged negligence occurred, and the crew members were employed by the county’s state-licensed ambulance service; the record provided no evidence to support the suggestion that the crew members acted in bad faith in the course of their response. *Beursken v. Gwinnett County*, 311 Ga. App. 467, 716 S.E.2d 540 (2011), cert. denied, 2012 Ga. LEXIS 62 (Ga. 2012).

Immunity cannot be waived by persons to whom statute applies. — Unlike sovereign immunity, a claim of immunity under O.C.G.A. § 31-11-8 cannot be waived by those persons to whom the statute applies; and among those persons to whom the statute applies are municipalities and counties. *Presley v. City of Blackshear*, 650 F. Supp. 2d 1307 (S.D. Ga. 2008).

Immunity not waived by purchase of insurance. — Immunity under O.C.G.A. § 31-11-8 could not be waived by a county’s purchase of insurance. *Johnson v. Gwinnett County*, 215 Ga. App. 79, 449 S.E.2d 856 (1994).

Cited in *Ramsey v. City of Forest Park*, 204 Ga. App. 98, 418 S.E.2d 432 (1992); *Schulze v. DeKalb County*, 230 Ga. App. 305, 496 S.E.2d 273 (1998).

RESEARCH REFERENCES

Am. Jur. 2d. — 40A Am. Jur. 2d, Hospitals and Asylums, § 12.

C.J.S. — 61 C.J.S., Motor Vehicles, §§ 833, 876.

ALR. — Liability for personal injury or property damage from operation of ambulance, 84 ALR2d 121.

Liability of operator of ambulance service for personal injuries to person being transported, 68 ALR4th 14.

Construction and application of “Good Samaritan” statutes, 68 ALR4th 294.

Rescue doctrine: liability of one who negligently causes motor vehicle accident

for injuries to person subsequently attempting to rescue persons or property, 73 ALR4th 737.

Application of “firemen’s rule” to bar recovery by emergency medical personnel injured in responding to, or at scene of, emergency, 89 ALR4th 1079.

Liability for negligence of ambulance attendants, emergency medical technicians, and the like, rendering emergency medical care outside hospital, 16 ALR5th 605.

31-11-9. Enforcement; inspections.

The department and its duly authorized agents are authorized to enforce compliance with this chapter and rules and regulations promulgated under this chapter as provided in Article 1 of Chapter 5 of this title and, in connection therewith during the reasonable business hours of the day, to enter upon and inspect in a reasonable manner the premises of persons providing ambulance service. All inspections under this Code section shall be in compliance with the provisions of Article 2 of Chapter 5 of this title. The department is also authorized to enforce compliance with this chapter, including but not limited to compliance with the EMSC Program and furnishing of emergency services within designated territories, by imposing fines in the same manner as provided in paragraph (6) of subsection (c) of Code Section 31-2-8; this enforcement action shall be a contested case under Chapter 13 of Title 50, the “Georgia Administrative Procedure Act.” (Code 1933, § 88-3110, enacted by Ga. L. 1972, p. 625, § 1; Ga. L. 1985, p. 149, § 31; Ga. L. 1997, p. 454, § 1; Ga. L. 2009, p. 453, § 1-9/HB 228; Ga. L. 2011, p. 705, § 5-16/HB 214.)

The 2011 amendment, effective July 1, 2011, in the last sentence of this Code section, inserted “in the same manner” and substituted “Code Section 31-2-8; this enforcement” for “Code Section 31-2-11, which enforcement”.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

31-11-10. Establishment of fees and regulations by municipalities.

Nothing in this chapter shall be construed as prohibiting or preventing a municipality from fixing, charging, or assessing any license fee or registration fee on any business or profession covered by this chapter or upon any related profession or any person engaged in any profession governed by this chapter or collecting any fee so imposed or from establishing additional regulations regarding ambulance service. (Ga. L. 1972, p. 625, § 2.)

RESEARCH REFERENCES

C.J.S. — 60 C.J.S., Motor Vehicles,
§§ 158, 173, 179.

31-11-11. Applicability of chapter.

This chapter shall not apply to the following:

(1) An ambulance or ambulance service operated by an agency of the United States government;

(2) A vehicle or aircraft that is operated by a person who is not licensed to furnish ambulance service which is rendering assistance temporarily in the case of a major catastrophe or emergency because the licensed ambulance services of the state are insufficient or unable to meet the demands thereof;

(3) An ambulance which is operated from a location outside of the state in order to transport patients from without the state's limits to locations within the state; or

(4) An invalid car or the operator thereof, except as provided in subsection (b) of Code Section 31-11-30. (Code 1933, § 88-3111, enacted by Ga. L. 1972, p. 625, § 1; Ga. L. 1994, p. 800, § 1; Ga. L. 2003, p. 304, § 5.)

31-11-12. Contracts between emergency service providers and pharmacies for furnishing dangerous drugs and controlled substances.

Medical directors of licensed ambulance services, first responders, or neonatal services are authorized to contract with licensed pharmacies to furnish dangerous drugs and controlled substances for the vehicles of their particular services. Such dangerous drugs and controlled substances shall be furnished, secured, and stored in the manner provided for in Code Section 26-4-116. (Code 1981, § 31-11-12, enacted by Ga. L. 1992, p. 1307, § 2; Ga. L. 1999, p. 81, § 31.)

ARTICLE 2**LICENSES**

Cross references. — Drivers' licenses generally, T. 40, C. 5.

31-11-30. License requirement.

(a) No person shall operate an ambulance service in this state without having a valid license or provisional license issued by the license officer pursuant to this chapter.

(b) No person shall make use of the word “ambulance” to describe any ground or air transportation or facility or service associated therewith which such person provides or to otherwise hold oneself out to be an ambulance service unless such person has a valid license issued pursuant to the provisions of this chapter or is exempt from licensing under this chapter and is not the operator of an invalid car.

(c) Any person who violates the provisions of this Code section shall be guilty of a misdemeanor. (Code 1933, §§ 88-3102, 88-3113, enacted by Ga. L. 1972, p. 625, § 1; Ga. L. 1991, p. 597, § 1; Ga. L. 1994, p. 800, § 2; Ga. L. 2003, p. 304, § 6.)

OPINIONS OF THE ATTORNEY GENERAL

For an update of crimes and offenses for which the Georgia Crime Information Center is authorized to collect and file identifying data, see 1991 Op. Att’y Gen. No. 91-35.

RESEARCH REFERENCES

Am. Jur. 2d. — 7 Am. Jur. 2d, Automobile Insurance, § 256. 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 100 et seq., 112 et seq. **C.J.S.** — 60 C.J.S., Motor Vehicles, § 162.

31-11-31. Application for license.

An application for a license or provisional license shall be made to the license officer. The application shall be made upon forms prescribed by the license officer and shall contain the following:

- (1) The name and address of the owner of the ambulance service or proposed ambulance service;
- (2) The name under which the applicant is doing business or proposes to do business;
- (3) The training and experience of the applicant in the transportation and care of patients;
- (4) A description or photograph of each ambulance, including the make, model, year of manufacture, and motor and chassis number; and the color scheme, insignia, name, monogram, or other distinguishing characteristics to be used to designate the applicant’s ambulance or ambulances;

(4.1) A description or photograph of each air ambulance, including the color scheme, insignia, name, monogram, or other distinguishing characteristics to be used to designate the applicant's air ambulance or air ambulances; and

(5) The location and description of the place or places from which the ambulance service is intended to operate. (Code 1933, § 88-3103, enacted by Ga. L. 1972, p. 625, § 1; Ga. L. 1981, p. 1898, § 4; Ga. L. 1982, p. 3, § 31; Ga. L. 1993, p. 468, § 1; Ga. L. 1994, p. 97, § 31; Ga. L. 2003, p. 304, § 7.)

31-11-31.1. License fee.

(a) Every ambulance service, whether privately operated or operated by any political subdivision of the state or any municipality, as a condition of maintaining a valid license shall pay an annual license fee to the license officer in an amount to be determined by the Board of Public Health. The amount of said license fee may be periodically revised by said board. Said license fee shall become due and payable upon the initial issuance of the license and each year thereafter on the anniversary date of the initial license issuance.

(b) All revenues collected from this annual fee shall be dedicated and deposited into the Indigent Care Trust Fund by the licensing officer. (Code 1981, § 31-11-31.1, enacted by Ga. L. 1993, p. 468, § 2; Ga. L. 2009, p. 453, § 1-5/HB 228; Ga. L. 2011, p. 705, § 6-4/HB 214.)

The 2011 amendment, effective July 1, 2011, substituted "Board of Public Health" for "Board of Community Health" in the first sentence of subsection (a).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1993, this Code

section was renumbered as Code Section 31-11-31.1. Ga. L. 1993, p. 468, § 2, had designated it as Code Section 31-11-33.1.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

31-11-32. Duties of license officer.

(a) The license officer shall, within ten days after receipt of an application for a license or provisional license as provided for in this article, cause such investigation as he deems necessary to be made to determine that the standards prescribed by this chapter have been met.

(b) The license officer shall issue a license under this article for a period of two years, unless earlier suspended, revoked, or terminated, when he finds that all the requirements of this article have been met.

(c) The license officer shall issue provisional licenses for 30 days for the purpose specified in paragraph (19) of Code Section 31-11-2.

(d) Before issuing a license to a government or governmental agency for a new ambulance service, the license officer shall establish that, due

to inadequate private service, the public's convenience and necessity require the proposed ambulance service. (Code 1933, § 88-3104, enacted by Ga. L. 1972, p. 625, § 1.)

JUDICIAL DECISIONS

Application of subsection (d). — Private nonprofit corporation which discharged the function of a hospital authority was not a government or governmental agency within the meaning of subsection

(d) of O.C.G.A. § 31-11-32. *Department of Human Resources v. Northeast Ga. Primary Care, Inc.*, 228 Ga. App. 130, 491 S.E.2d 01 (1997).

31-11-33. Insurance coverage as condition of licensing.

(a) Every ambulance operated on the streets, highways, and private access roads of this state by persons engaged in providing ambulance service shall have insurance coverage issued by an insurance company licensed to do business in this state providing at least the minimum coverage required for motor vehicles under Chapter 34 of Title 33; provided, however, in the case of ambulances operated by the state, the coverage required shall be the same coverage required for other state vehicles under Chapter 9 of Title 45. Every air ambulance operated by persons engaged in providing air ambulance service in this state shall have insurance coverage as described in Code Section 33-7-9.

(b) No ambulance shall be licensed nor shall any license be renewed unless the ambulance has insurance coverage in force as required by this Code section. A certificate of insurance shall be submitted to the license officer for approval prior to the issuance or renewal of each ambulance license. Satisfactory evidence that such insurance is at all times in force and effect shall be furnished to the license officer, in such form as he may specify, by all licensees required to provide such insurance under this Code section.

(c) This Code section shall apply to all ambulances, whether privately operated or operated by any political subdivision of the state or any municipality.

(d) This Code section shall not apply to first responders, which do not transport patients, operated by municipalities or counties that have not elected to waive their governmental immunity by purchasing vehicle liability insurance pursuant to Code Section 33-24-51. (Code 1933, § 88-3104.1, enacted by Ga. L. 1975, p. 916, § 1; Ga. L. 1986, p. 1321, § 1; Ga. L. 1987, p. 542, § 4; Ga. L. 2003, p. 304, § 8.)

Law reviews. — For annual survey of local government law, see 38 Mercer L. Rev. 289 (1986).

RESEARCH REFERENCES

ALR. — Liability of operator of ambulance service for personal injuries to person being transported, 68 ALR4th 14.

31-11-34. Standards for ambulances.

Ambulances operated by persons engaged in providing ambulance service shall meet all standards as set forth in the department's rules and regulations. (Code 1933, § 88-3105, enacted by Ga. L. 1972, p. 625, § 1; Ga. L. 1975, p. 916, § 2; Ga. L. 2003, p. 304, § 9.)

31-11-35. Renewal of license; change of ownership of ambulance service.

(a) Renewal of any license issued under this article shall require conformance with the requirements of this article as upon original licensing.

(b) Change of ownership of an ambulance service shall require a new application and a new license issued in conformance with the requirements of this article as upon original licensing. (Code 1933, § 88-3106, enacted by Ga. L. 1972, p. 625, § 1.)

31-11-36. Suspension or revocation of license; appeal to superior court.

(a) Any license issued under this article may be suspended or revoked for a failure of a licensee to comply and to maintain compliance with this article or rules and regulations issued under this article, but only after opportunity for a hearing as provided in Article 1 of Chapter 5 of this title.

(b) Any person who has exhausted all administrative remedies available within the department and who is substantially aggrieved by a final order or final action of the license officer is entitled to judicial review in the manner provided by Article 1 of Chapter 5 of this title and, notwithstanding Code Section 31-5-3, shall be entitled to an appeal to superior court as provided in subsection (c) of this Code section.

(c) Appeal to the superior court shall be by petition which shall be filed in the clerk's office of such court within 30 days after the final order or action of the department; the petition shall set forth the names of the parties taking the appeal, the order, rule, regulation, or decision appealed from, and the reason it is claimed to be erroneous. The enforcement of the order or action appealed from shall be automatically stayed upon the filing of such petition unless the commissioner of public

health in his final order certifies that his decision if stayed will harm the public health and safety, in which case a reviewing court may order a stay only if the court makes a finding that the public health and safety will not be harmed by the issuance of the stay. Upon the filing of such petition, the petitioner shall serve on the commissioner a copy thereof in the manner prescribed by law for the service of process, unless such service of process is waived. The appeal shall be an appeal de novo to the superior court and the appealing party shall have a right to a jury trial and all rights provided under Chapter 11 of Title 9, the “Georgia Civil Practice Act.” The superior court shall render a decision approving, setting aside, or modifying the order or action appealed from. (Code 1933, § 88-3107, enacted by Ga. L. 1972, p. 625, § 1; Ga. L. 1985, p. 149, § 31; Ga. L. 1988, p. 1923, § 2; Ga. L. 2009, p. 453, § 1-6/HB 228; Ga. L. 2011, p. 705, § 6-5/HB 214.)

The 2011 amendment, effective July 1, 2011, substituted “commissioner of public health” for “commissioner of community health” in the second sentence of subsection (c).

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

ARTICLE 3

PERSONNEL

31-11-49. Definitions.

As used in this article, the term:

(1) “Center” means the Georgia Crime Information Center.

(2) “Certify” and “certification” are synonymous with “license” and “licensure.”

(3) “Emergency medical services personnel” means all individuals licensed by the department under this article. (Code 1981, § 31-11-49, enacted by Ga. L. 2011, p. 539, § 1/SB 76.)

Effective date. — This Code section became effective July 1, 2011.

31-11-50. Medical adviser.

(a) To enhance the provision of emergency medical care, each ambulance service shall be required to have a medical adviser. The adviser shall be a physician licensed to practice medicine in this state and subject to approval by the medical consultant of the Emergency Health Section of the Department of Public Health. Ambulance services unable to obtain a medical adviser, due to unavailability or refusal of physicians to act as medical advisers, may request the district health director

or his or her designee to act as medical adviser until the services of a physician are available.

(b) The duties of the medical adviser shall be to provide medical direction and training for the ambulance service personnel in conformance with acceptable emergency medical practices and procedures.

(c) This Code section shall not apply to any county having a population under 12,000 according to the United States decennial census of 1970 or any such future census. (Code 1933, § 88-3118, enacted by Ga. L. 1980, p. 1170, § 1A; Ga. L. 2009, p. 453, § 1-36/HB 228; Ga. L. 2011, p. 705, § 6-1/HB 214.)

The 2011 amendment, effective July 1, 2011, substituted “Department of Public Health” for “Division of Public Health of the Department of Community Health” in the second sentence of subsection (a).

Cross references. — Licensing of physicians, § 43-34-20 et seq.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

31-11-51. Certification and recertification of emergency medical technicians; rules and regulations; use of conviction data in licensing decisions.

(a) As used in this Code section, the term “conviction data” means a record of a finding or verdict of guilty or plea of guilty or plea of nolo contendere with regard to any crime, regardless of whether an appeal of the conviction has been sought.

(b) The board shall, by regulation, authorize the department to establish procedures and standards for the licensing of emergency medical services personnel. The department shall succeed to all rules and regulations, policies, procedures, and administrative orders of the composite board which were in effect on December 31, 2001, and which relate to the functions transferred to the department by this chapter. Such rules, regulations, policies, procedures, and administrative orders shall remain in effect until amended, repealed, superseded, or nullified by proper authority or as otherwise provided by law.

(c) In reviewing applicants for initial licensure of emergency medical services personnel, the department shall be authorized pursuant to this Code section to obtain conviction data with respect to such applicants for the purposes of determining the suitability of the applicant for licensure.

(d) The department shall by rule or regulation, consistent with the requirements of this paragraph, establish a procedure for requesting a fingerprint based criminal history records check from the center and the Federal Bureau of Investigation. Fingerprints shall be in such form and of such quality as prescribed by the center and under standards adopted by the Federal Bureau of Investigation. Fees may be charged

as necessary to cover the cost of the records search. An applicant may request that a criminal history records check be conducted by a state or local law enforcement agency or by a private vendor approved by the department. Fees for criminal history records checks shall be paid by the applicant to the entity processing the request at the time such request is made. The state or local law enforcement agency or private vendor shall remit payment to the center in such amount as required by the center for conducting a criminal history records check. The department shall accept a criminal history records check whether such request is made through a state or local law enforcement agency or through a private vendor approved by the department. Upon receipt of an authorized request, the center shall promptly cause such criminal records search to be conducted. The center shall notify the department in writing of any finding of disqualifying information, including, but not limited to, any conviction data regarding the fingerprint records check, or if there is no such finding.

(e) Conviction data received by the department or a state or local law enforcement agency shall be privileged and shall not be a public record or disclosed to any person. Conviction data shall be maintained by the department and the state or local law enforcement pursuant to laws regarding such records and the rules and regulations of the center and the Federal Bureau of Investigation. Penalties for the unauthorized release or disclosure of conviction data shall be as prescribed by law or rule or regulation of the center or Federal Bureau of Investigation.

(f) The center, the department, or any law enforcement agency, or the employees of any such entities, shall neither be responsible for the accuracy of information provided pursuant to this Code section nor be liable for defamation, invasion of privacy, negligence, or any other claim relating to or arising from the dissemination of information pursuant to this Code section. (Code 1933, § 88-3112.1, enacted by Ga. L. 1977, p. 281, § 2; Ga. L. 2001, p. 1145, § 2; Ga. L. 2011, p. 539, § 2/SB 76; Ga. L. 2012, p. 83, § 4/HB 247.)

The 2011 amendment, effective July 1, 2011, added subsection (a); designated the existing provisions of the Code section as subsection (b); substituted “the licensing of emergency medical services personnel” for “certifying and recertifying emergency medical technicians” in the first sentence of subsection (b); and added subsections (c) through (f).

The 2012 amendment, effective July

1, 2012, in subsection (d), inserted “, consistent with the requirements of this paragraph,” in the first sentence, added the fourth through seventh sentences, and substituted “of an authorized request” for “thereof” in the eighth sentence; and in subsection (e), inserted “or a state or local law enforcement agency” in the first sentence and inserted “and the state or local law enforcement” in the second sentence.

31-11-52. Certification and recertification of, and training for, paramedics and cardiac technicians.

(a) The department shall establish procedures and standards for certifying and recertifying paramedics and cardiac technicians. An applicant for initial certification as a paramedic or a cardiac technician must:

(1) Submit a completed application on a form to be prescribed by the department, which shall include evidence that the applicant is 18 years of age or older and is of good moral character;

(2) Submit from the department a notarized statement that the applicant has completed a training course approved by the department;

(3) Submit to the department a fee as set forth in the regulations of the department; and

(4) Meet such other requirements as are set forth in the rules and regulations of the department.

(b) The department shall also adopt procedures and standards for its approval of paramedic training courses and cardiac technician training courses. The department shall adopt such regulations after consultation with appropriate public and private agencies and organizations concerned with medical education and the practice of medicine. Procedures and standards adopted by the department shall be consistent with the purposes and provisions of this chapter. (Code 1933, §§ 88-3112.1, 88-3112.2, enacted by Ga. L. 1977, p. 281, §§ 2, 3; Ga. L. 1988, p. 1923, § 3; Ga. L. 2001, p. 1145, § 3.)

31-11-53. Services which may be rendered by certified emergency medical technicians and trainees.

(a) Upon certification by the department, emergency medical technicians may do any of the following:

(1) Render first-aid and resuscitation services as taught in the United States Department of Transportation basic training courses for emergency medical technicians or an equivalent course approved by the department; and

(2) Upon the order of a duly licensed physician, administer approved intravenous solutions.

(b) While in training preparatory to becoming certified, emergency medical technician trainees may perform any of the functions specified in this Code section under the direct supervision of a duly licensed

physician or a registered nurse. (Code 1933, § 88-3112.3, enacted by Ga. L. 1977, p. 281, § 4.)

JUDICIAL DECISIONS

Cited in *Griesel v. Hamlin*, 963 F.2d 338 (11th Cir. 1992).

31-11-53.1. Automated external defibrillator program; establishment; regulations; liability.

(a) As used in this Code section, the term:

(1) "Automated external defibrillator" means a defibrillator which:

(A) Is capable of cardiac rhythm analysis;

(B) Will charge and be capable of being activated to deliver a countershock after electrically detecting the presence of certain cardiac dysrhythmias; and

(C) Is capable of continuous recording of the cardiac dysrhythmia at the scene with a mechanism for transfer and storage or for printing for review subsequent to use.

(2) "Defibrillation" means to terminate ventricular fibrillation.

(3) "First responder" means any person or agency who provides on-site care until the arrival of a duly licensed ambulance service. This shall include, but not be limited to, persons who routinely respond to calls for assistance through an affiliation with law enforcement agencies, fire suppression agencies, rescue agencies, and others.

(b) It is the intent of the General Assembly that an automated external defibrillator may be used by any person for the purpose of saving the life of another person in cardiac arrest. In order to ensure public health and safety:

(1) It is recommended that all persons who have access to or use an automated external defibrillator obtain appropriate training as set forth in the rules and regulations of the Department of Public Health. It is further recommended that such training include at a minimum the successful completion of:

(A) A nationally recognized health care provider/professional rescuer level cardiopulmonary resuscitation course; and

(B) A department established or approved course which includes demonstrated proficiency in the use of an automated external defibrillator;

(2) All persons and agencies possessing and maintaining an automated external defibrillator shall notify the appropriate emergency medical services system of the existence and location of the automated external defibrillator prior to said defibrillator being placed in use;

(3) All persons who use an automated external defibrillator shall activate the emergency medical services system as soon as reasonably possible by calling 9-1-1 or the appropriate emergency telephone number upon use of the automated external defibrillator; and

(4) Within a reasonable period of time, all persons who use an automated external defibrillator shall make available a printed or electronically stored report to the licensed emergency medical services provider which transports the patient.

(c) All persons who provide instruction to others in the use of the automated external defibrillator shall have completed an instructor course established or approved by the department.

(d) The department shall establish an automated external defibrillator program for use by emergency medical technicians. Such program shall be subject to the direct supervision of a medical adviser approved under Code Section 31-11-50. No emergency medical technician shall be authorized to use an automated external defibrillator to defibrillate a person unless that defibrillator is a properly maintained automated external defibrillator and that emergency medical technician:

(1) Submits to and has approved by the department an application for such use, and in considering that application the department may obtain and use the recommendation of the local coordinating entity for the health district in which the applicant will use such defibrillator;

(2) Successfully completes an automated external defibrillator training program established or approved by the department;

(3) Is subject to protocols requiring that both the emergency physician who receives a patient defibrillated by that emergency medical technician and the medical adviser for the defibrillator program review the department required prehospital care report and any other documentation of the defibrillation of any person by that emergency medical technician and send a written report of such review to the district EMS medical director of the health district in which the defibrillation occurred; and

(4) Obtains a passing score on an annual automated external defibrillator proficiency exam given in connection with that program.

(e) It shall not be necessary for a licensed emergency medical service, licensed neonatal transport service, or other services licensed by the

department which provide care administered by cardiac technicians or paramedics to obtain department approval for the use of an automated external defibrillator on licensed vehicles.

(f) Any emergency medical technician who violates the provisions of this Code section shall be subject to having revoked by the department that person's authority to use an automated external defibrillator. Such a violation shall also be grounds for any entity which issues a license or certificate authorizing such emergency medical technician to perform emergency medical services to take disciplinary action against such person, including but not limited to suspension or revocation of that license or certificate. Such a violation shall also be grounds for the employer of such emergency medical technician to impose any sanction available thereto, including but not limited to dismissal.

(g) Any first responder who gratuitously and in good faith renders emergency care or treatment by the use of or provision of an automated external defibrillator, without objection of the injured victim or victims thereof, shall not be held liable for any civil damages as a result of such care or treatment or as a result of any act or failure to act in providing or arranging further medical treatment where the person acts without gross negligence or intent to harm or as an ordinary reasonably prudent person would have acted under the same or similar circumstances, even if such individual does so without benefit of the appropriate training. This provision includes paid persons who extend care or treatment without expectation of remuneration from the patient or victim for receiving the defibrillation care or treatment. (Code 1981, § 31-11-53.1, enacted by Ga. L. 1988, p. 1918, § 1; Ga. L. 1998, p. 661, § 1; Ga. L. 2005, p. 660, § 4/HB 470; Ga. L. 2009, p. 453, § 1-37/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214.)

The 2011 amendment, effective July 1, 2011, substituted "Department of Public Health" for "Department of Community Health" in the first sentence of the introductory paragraph of paragraph (b)(1).

Cross references. — Automated external defibrillator required in schools, § 20-2-775.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2005, the subsection (b) designation preceding paragraph (b)(3) was deleted.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

31-11-53.2. "Lay rescuer" defined; use of automated external defibrillators.

(a) As used in this Code section, the term "lay rescuer" means a person trained to provide cardiopulmonary resuscitation and to use an automated external defibrillator, as defined in Code Section 31-11-53.1, and who is participating in a physician or medically authorized automated external defibrillator program.

(b) The following guidelines shall be applicable to the use of automated external defibrillators by lay rescuers:

(1) Any person or entity who acquires an automated external defibrillator shall ensure that:

(A) Expected users of the automated external defibrillator receive American Heart Association or American Red Cross training in cardiopulmonary resuscitation and automated external defibrillator use or complete an equivalent nationally recognized course;

(B) The defibrillator is maintained and tested according to the manufacturer's operational guidelines;

(C) There is involvement of a licensed physician or other person authorized by the composite board in the site's automated external defibrillator program to ensure compliance with requirements for training, notification, and maintenance; and

(D) Any person who renders emergency care or treatment to a person in cardiac arrest by using an automated external defibrillator activates the emergency medical services system as soon as possible and reports any clinical use of the automated external defibrillator to the licensed physician or other person authorized by the composite board who is supervising the program; and

(2) Any person or entity who acquires an automated external defibrillator shall notify an agent of the emergency communications or vehicle dispatch center of the existence, location, and type of automated external defibrillator. (Code 1981, § 31-11-53.2, enacted by Ga. L. 2001, p. 776, § 1; Ga. L. 2002, p. 415, § 31.)

Cross references. — Immunity for operators of external defibrillators, § 51-1-29.3.

Law reviews. — For note on the 2001 enactment of this Code section, see 18 Ga. St. U.L. Rev. 146 (2001).

31-11-54. Services which may be rendered by paramedics and paramedic trainees.

(a) Upon certification by the department, paramedics may perform any service that a cardiac technician is permitted to perform. In addition, upon the order of a duly licensed physician and subject to the conditions set forth in paragraph (2) of subsection (a) of Code Section 31-11-55, paramedics may perform any other procedures which they have been both trained and certified to perform, including, but not limited to:

(1) Administration of parenteral injections of diuretics, anticonvulsants, hypertonic glucose, antihistamines, bronchodilators, emetics, narcotic antagonists, and others;

- (2) Cardioversion; and
- (3) Gastric suction by intubation.

(b) While in training preparatory to becoming certified, paramedic trainees may perform any of the functions specified in this Code section under the direct supervision of a duly licensed physician, a registered nurse, or an approved paramedic clinical preceptor. (Code 1933, § 88-3112.5, enacted by Ga. L. 1977, p. 281, § 6; Ga. L. 1988, p. 1923, § 4; Ga. L. 1989, p. 1782, § 2; Ga. L. 2001, p. 1145, § 4.)

31-11-55. Services which may be rendered by certified cardiac technicians and trainees.

(a) Upon certification by the department, cardiac technicians may do any of the following:

(1) Render first-aid and resuscitation services;

(2) Upon the order of a duly licensed physician and as recommended by the Emergency Health Services Advisory Council and approved by the department:

(A) Perform cardiopulmonary resuscitation and defibrillation in a pulseless, nonbreathing patient;

(B) Administer approved intravenous solutions;

(C) Administer parenteral injections of antiarrhythmic agents, vagolytic agents, chronotropic agents, alkalizing agents, analgesic agents, and vasopressor agents; and

(D) Perform pulmonary ventilation by esophageal airway and endotracheal intubation.

(b) While in training preparatory to becoming certified, cardiac technician trainees may perform any of the functions specified in this Code section under the direct supervision of a duly licensed physician or a registered nurse. (Code 1933, § 88-3112.4, enacted by Ga. L. 1977, p. 281, § 5; Ga. L. 2001, p. 1145, § 5.)

31-11-56. Revocation of certificates issued to emergency medical technicians.

Certificates issued to emergency medical technicians pursuant to this chapter may be revoked for good cause, as set forth in the rules and regulations, by the department after notice to the certificate holder of the charges and an opportunity for hearing. Such proceedings shall be conducted in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." (Code 1933, § 88-3112.6, enacted by Ga. L. 1977, p. 281, § 7.)

31-11-57. Revocation of certificates issued to paramedics and cardiac technicians.

Certificates issued to paramedics and cardiac technicians pursuant to this chapter may be revoked for good cause by the department in accordance with established rules and regulations, after notice to the certificate holder of the charges and an opportunity for hearing. Such proceedings shall be conducted in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." The department shall have the authority to conduct investigations and subpoena any documents relating to the fitness of paramedics and cardiac technicians. Such documents may be used in any hearing conducted by the department. (Code 1933, § 88-3112.7, enacted by Ga. L. 1977, p. 281, § 8; Ga. L. 1980, p. 1170, § 1; Ga. L. 1988, p. 1923, § 5; Ga. L. 2001, p. 1145, § 6.)

31-11-58. Recertification of emergency medical technicians; continuing education requirements.

(a) The department shall be authorized to require emergency medical technicians seeking recertification under this chapter to complete department approved continuing education. The department shall be authorized to approve courses including but not limited to courses offered by the department, the number of hours required, and the category in which these hours should be earned.

(b) The department shall be authorized to waive the continuing education requirement in cases of hardship, disability, illness, or under such other circumstances as the department deems appropriate.

(c) The department shall be authorized to promulgate rules and regulations to implement and ensure compliance with the requirements of this Code section.

(d) This Code section shall apply to each certification and recertification cycle which begins after the 1992-1993 renewal. (Code 1933, § 88-3112.8, enacted by Ga. L. 1977, p. 281, § 9; Ga. L. 1981, p. 1315, § 1; Ga. L. 1988, p. 1923, § 6; Ga. L. 1991, p. 597, § 2; Ga. L. 1993, p. 1082, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 61 Am. Jur. 2d, Physicians, Surgeons and Other Healers, § 17 et seq.

C.J.S. — 70 C.J.S., Physicians, Surgeons, and Other Health Care Providers, §§ 9, 10.

31-11-58.1. Recertification of paramedics and cardiac technicians; continuing education requirements.

(a) The department shall be authorized to require paramedics and cardiac technicians seeking recertification under this chapter to complete department approved continuing education of not less than 40 hours biennially. The department shall be authorized to approve courses including but not limited to courses offered by the department, the number of hours required, and the category in which these hours should be earned.

(b) The department shall be authorized to waive the continuing education requirement in cases of hardship, disability, illness, or under such other circumstances as the department deems appropriate.

(c) The department shall be authorized to promulgate rules and regulations to implement and ensure compliance with the requirements of this Code section.

(d) This Code section shall apply to each recertification cycle which begins after the renewal deadline in 2000. (Code 1981, § 31-11-58.1, enacted by Ga. L. 1993, p. 1082, § 1; Ga. L. 2001, p. 1145, § 7.)

31-11-59. Services of emergency medical technicians, paramedics, and cardiac technicians in hospitals.

Emergency medical technicians, paramedics, and cardiac technicians may render any service which they are authorized to render under Code Sections 31-11-53, 31-11-54, and 31-11-55, respectively, in any hospital. Such services shall not be rendered in lieu of the services of a physician or a registered professional nurse and shall only be rendered in a hospital at the discretion of and after the prior approval by the hospital governing authority on the order of a physician or, if a physician or registered professional nurse is present, at the direction of a physician or registered professional nurse, provided that such hospital has a currently valid permit or conditional permit issued by the department pursuant to Article 1 of Chapter 7 of this title. The provisions of this Code section are cumulative and are not intended to limit the rendering of services by emergency medical technicians, cardiac technicians, and paramedics in any area in which they are already authorized to render such services. (Code 1933, § 88-3112.11, enacted by Ga. L. 1979, p. 1017, § 1; Ga. L. 1983, p. 694, § 1; Ga. L. 1988, p. 1923, § 7.)

OPINIONS OF THE ATTORNEY GENERAL

Services not to be provided in lieu of other health care providers. — Although O.C.G.A. § 31-11-59 applies only to emergency medical technicians (EMTs) providing services in hospitals, the statute indicates the intent of the legislature

that services provided by EMTs are not to be rendered in lieu of services of other health care professionals in other medical facilities where the Department of Human Resources (now the Department of Com-

munity Health for these purposes) may also authorize the use of EMTs; e.g., free-standing emergency care clinics. 1984 Op. Att'y Gen. No. 84-27.

31-11-60. Obtaining and administering drugs by certified employees of counties or municipalities.

(a) Any emergency medical technician, paramedic, or cardiac technician who is certified under this article and who works for a county or municipal police department, fire department, or rescue unit is authorized to obtain any substance which such person is authorized to administer by virtue of his certification. Any such unit to which the emergency medical technician, paramedic, or cardiac technician is attached must be licensed by the department as a medical first responder unit. Such unit may then obtain from a hospital pharmacy those legend drugs listed and legally permitted to be used by paramedics, emergency medical technicians, or cardiac technicians. The first responder unit shall have a signed agreement with the hospital in order for the hospital to furnish such drugs, and a copy of this agreement must be filed with the Georgia Drugs and Narcotics Agency. The requirements for administering, controlling, and storing these drugs shall be the same as the requirements for a standard ward inventory in a hospital.

(b) Any substance obtained under subsection (a) of this Code section shall be used only in connection with the emergency medical technician's, paramedic's, or cardiac technician's employment with the county or municipality, as such, and only while on duty as an emergency medical technician, paramedic, or cardiac technician.

(c) It shall not be necessary for an emergency medical technician, paramedic, or cardiac technician to be assigned to a licensed ambulance service in order to obtain any substance under subsection (a) of this Code section. (Code 1933, § 88-3112.13, enacted by Ga. L. 1980, p. 1758, § 1; Ga. L. 1988, p. 1923, § 8.)

31-11-60.1. Program for physician control over emergency medical services to nonhospital patients.

(a) As used in this Code section, the term:

(1) "Ambulance service medical director" means a physician licensed to practice in this state and subject to the approval of the local coordinating entity and the department who has agreed, in writing, to provide medical direction to a specific ambulance service.

(2) "Base station facility" means any facility responsible for providing direct physician control of emergency medical services.

(3) "District emergency medical services medical director" means a person who is:

- (A) A physician licensed to practice medicine in this state;
- (B) Familiar with the design and operation of prehospital emergency services systems;
- (C) Experienced in the prehospital emergency care of acutely ill or injured patients; and
- (D) Experienced in the administrative processes affecting regional and state prehospital emergency medical services systems.

(4) "Emergency medical services personnel" means any emergency medical technician, paramedic, cardiac technician, or designated first responder who is certified under this article.

(b) The department and the district emergency medical services medical directors shall develop and implement a program to ensure appropriate physician control over the rendering of emergency medical services by emergency medical services personnel to patients who are not in a hospital, which program shall include but not be limited to the following:

(1) Medical protocols regarding permissible and appropriate emergency medical services which may be rendered by emergency medical services personnel to a patient not in a hospital;

(2) Communication protocols regarding which medical situations require direct voice communication between emergency medical services personnel and a physician or a nurse or a paramedic or a physician assistant in direct communication with a physician prior to those emergency medical services personnel's rendering specified emergency medical services to a patient not in a hospital;

(3) Record-keeping and accountability requirements for emergency medical services personnel and base station facility personnel in order to monitor compliance with this subsection; and

(4) Base station facility standards.

(c) The ambulance service medical director shall serve as the medical authority for the ambulance service, performing liaison activities with the medical community, medical facilities, and governmental agencies. The ambulance service medical director shall be responsible for the provision of medical direction and training for the emergency medical services personnel within the ambulance service for which he is responsible in conformance with acceptable emergency medical practices and procedures. These responsibilities shall include the duties set forth in the department's rules and regulations for ambulance services.

(d) The district emergency medical services medical director shall not override those policies or protocols of the ambulance service medical director if that ambulance service medical director is documenting compliance with the department's rules and regulations for ambulance services.

(e) Every base station facility shall comply with the policies, protocols, requirements, and standards provided for in subsection (b) of this Code section.

(f) All emergency medical services personnel shall comply with appropriate policies, protocols, requirements, and standards of the ambulance service medical director for that service or the policies, protocols, requirements, and standards provided for in subsection (b) of this Code section.

(g) Conduct which would otherwise constitute a violation of subsection (f) of this Code section shall not be such a violation if such conduct was carried out by any emergency medical services personnel pursuant to an order from a physician, the ambulance service medical director for such person, or the protocol of that ambulance service as approved by the ambulance service medical director for such person.

(h) Violation by any base station facility of subsection (e) of this Code section may be grounds for the removal of that base station facility's designation by the department.

(i) Enforcement of subsections (g) and (h) of this Code section shall commence no earlier than 12 months after July 1, 1989. (Code 1981, § 31-11-60.1, enacted by Ga. L. 1989, p. 1782, § 3; Ga. L. 2009, p. 859, § 3/HB 509.)

31-11-61. Penalty.

Any person who shall falsely represent himself to be a certified emergency medical technician, certified cardiac technician, or certified paramedic or who shall accept or continue in employment as such and perform the duties thereof without being certified as prescribed by this chapter shall be guilty of a misdemeanor. (Code 1933, § 88-3112.10, enacted by Ga. L. 1977, p. 281, § 11; Ga. L. 1988, p. 1923, § 9.)

ARTICLE 4

EMERGENCY SERVICES

Administrative rules and regulations. — Emergency medical services, Official Compilation of the Rules and Regulations of the State of Georgia,

Department of Human Resources (now administered by the Department of Public Health), Public Health, Chapter 290-5-30.

31-11-80. Short title.

This article shall be known and cited as the “Emergency Services Law.” (Code 1981, § 31-11-80, enacted by Ga. L. 1996, p. 668, § 1.)

31-11-81. Definitions.

As used in this article, the term:

(1) “Emergency condition” means any medical condition of a recent onset and severity, including but not limited to severe pain that would lead a prudent layperson, possessing an average knowledge of medicine and health, to believe that his or her condition, sickness, or injury is of such a nature that failure to obtain immediate medical care could result in:

- (A) Placing the patient’s health in serious jeopardy;
- (B) Serious impairment to bodily functions; or
- (C) Serious dysfunction of any bodily organ or part.

(2) “Emergency medical provider” means any provider of emergency medical transportation licensed or permitted by the Department of Public Health, any hospital licensed or permitted by the Department of Community Health, any hospital based service, or any physician licensed by the Georgia Composite Medical Board who provides emergency services.

(3) “Emergency services” means emergency medical transportation or health care services provided in a hospital emergency facility to evaluate and treat any emergency condition.

(4) “Prospective authorization” means contacting for approval or authorization to evaluate and treat a patient any insurer, health maintenance organization, hospital medical service corporation, or health benefit plan, a representative of which is not physically present in the hospital’s emergency department at the time such patient presents for emergency services. (Code 1981, § 31-11-81, enacted by Ga. L. 1996, p. 668, § 1; Ga. L. 2006, p. 652, § 1/HB 1257; Ga. L. 2008, p. 12, § 2-28/SB 433; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2009, p. 859, § 2/HB 509; Ga. L. 2011, p. 705, § 5-17/HB 214.)

The 2011 amendment, effective July 1, 2011, substituted “Department of Public Health” for “Department of Community Health” in paragraph (2).

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

OPINIONS OF THE ATTORNEY GENERAL

Definition of “emergency condition” in paragraph (1) of O.C.G.A. § 31-11-81 governs and controls over any

contrary definition in an insurance policy issued in Georgia. 1997 Op. Att’y Gen. No. U97-4.

31-11-82. Evaluation of person with emergency condition; initiation of intervention without prospective authorization; insurer may not deny payment after prospective authorization given.

(a) Once a person with an emergency condition presents himself or herself to an emergency medical provider for emergency services, that person shall be evaluated by medical personnel. This evaluation may include diagnostic testing to assess the extent of the condition, sickness, or injury if such testing is appropriate to stabilize the patient’s condition. For purposes of this Code section, the term “emergency medical provider” includes without limitation an emergency services provider.

(b) If in the opinion of the attending physician or licensed ambulance service personnel acting under the medical direction of an ambulance service medical director as defined in Code Section 31-11-60.1 the evaluation provided under subsection (a) of this Code section warrants, he or she may initiate appropriate intervention to stabilize the condition of the patient without seeking or receiving prospective authorization by an insurer, a health maintenance organization, or a private health benefit plan. No insurer, health maintenance organization, or private health benefit plan may subsequently deny payment for an evaluation, diagnostic testing, or treatment provided as part of such intervention for an emergency condition.

(c) No insurer, health maintenance organization, or private health benefit plan which has given prospective authorization after the stabilization of a person’s condition as provided in subsection (b) of this Code section for an evaluation, diagnostic testing, or treatment provided for in this article may subsequently deny payment for the provision of such evaluation, diagnostic testing, or treatment. An acknowledgment of an enrollee’s eligibility for benefits by the insurer, health maintenance organization, or private health benefit plan shall not, by itself, be construed as a prospective authorization for the purposes of this Code section. (Code 1981, § 31-11-82, enacted by Ga. L. 1996, p. 668, § 1; Ga. L. 1997, p. 908, § 1; Ga. L. 2006, p. 652, § 2/HB 1257.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1996, a comma was deleted following “attending physician” at the beginning of subsection (b).

ARTICLE 5

GEORGIA TRAUMA CARE NETWORK COMMISSION

Cross references. — Funding for trauma care system, § 40-6-189.

31-11-100. Definitions.

As used in this article, the term:

(1) “Burn trauma center” means a facility that has been designated by the Department of Public Health as a burn center and that admits at least 300 patients annually with the burn specific principal diagnosis codes as published by the International Classification of Diseases.

(2) “Trauma burn patient” means a patient admitted to a burn trauma center with a burn specific principal diagnosis code as published by the International Classification of Diseases who has at least one of the following injuries or complications based on criteria developed by the American Burn Association:

(A) Partial-thickness burns over at least 10 percent of the total body surface area;

(B) Burns that involve the face, hands, feet, genitalia, perineum, or major joints;

(C) Third-degree burns in any age group;

(D) Chemical burns;

(E) An inhalation injury;

(F) A burn injury and preexisting medical disorder that could complicate management, prolong recovery, or affect mortality;

(G) Burns and concomitant trauma, such as fractures, in which the burn injury poses the greatest risk of morbidity or mortality; or

(H) Burn injury patients who require special social, emotional, or rehabilitative intervention.

(3) “Trauma center” means a facility designated by the Department of Public Health as a Level I, II, III, or IV or burn trauma center. However, a burn trauma center shall not be considered or treated as a trauma center for purposes of certificate of need requirements under state law or regulations, including exceptions to need and adverse impact standards allowed by the department for trauma centers or for purposes of identifying safety net hospitals.

(4) “Trauma patient” means a patient who is on the State Trauma Registry or the National Trauma Registry of the American College of Surgeons or who is a trauma burn patient.

(5) “Trauma service codes” means the International Classification of Diseases discharge codes designated as trauma service codes by the American College of Surgeons, Committee on Trauma.

(6) “Uncompensated” means care provided by a designated trauma center, emergency medical services provider, or physician to a trauma patient as defined by the Georgia Trauma Care Network Commission who:

(A) Has no medical insurance, including federal Medicare Part B coverage;

(B) Is not eligible for medical assistance coverage;

(C) Has no medical coverage for trauma care through workers’ compensation, automobile insurance, or any other third party, including any settlement or judgment resulting from such coverage; and

(D) Has not paid for the trauma care provided by the trauma provider after documented attempts by the trauma care services provider to collect payment. (Code 1981, § 31-11-100, enacted by Ga. L. 2007, p. 36, § 1/SB 60; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 245, § 1/HB 307; Ga. L. 2011, p. 705, § 6-3/HB 214.)

The 2011 amendments. — The first 2011 amendment, effective July 1, 2011, added paragraphs (1) and (2); redesignated former paragraphs (1) through (4) as present paragraphs (3) through (6), respectively; in paragraph (3), inserted “or burn” in the first sentence and added the second sentence; added “or who is a trauma burn patient” at the end of paragraph (4); and substituted “International Classification of Diseases” for “ICDA-9-CM” in paragraph (5). The second 2011 amendment, effective

July 1, 2011, substituted “Department of Public Health” for “Department of Community Health” in paragraph (3).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2011, “Department of Public Health” was substituted for “Department of Community Health” in paragraph (1).

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

RESEARCH REFERENCES

C.J.S. — 41 C.J.S., Hospitals, § 37.

31-11-101. Creation of Georgia Trauma Care Network Commission; composition; membership; meetings; vacancies; compensation.

(a) There is created the Georgia Trauma Care Network Commission which is assigned to the Department of Public Health for administra-

tive purposes only, as prescribed in Code Section 50-4-3. The commission shall consist of nine members who shall be appointed as provided in this Code section. Five members shall be appointed by the Governor. The Governor shall include among his or her appointees a physician who is actively involved in providing emergency trauma care, a representative of a hospital that is a designated trauma center, and a representative of a state 9-1-1 zone licensed emergency medical services provider. Two members shall be appointed by the Lieutenant Governor. Two members shall be appointed by the Speaker of the House of Representatives. In making the initial appointments, the Governor shall appoint three members for a term of four years and two members for a term of two years, the Lieutenant Governor shall appoint one member for a term of four years and one member for a term of two years, and the Speaker of the House of Representatives shall appoint one member for a term of four years and one member for a term of two years. Thereafter, persons appointed to succeed the initial members shall serve four-year terms of office. The Governor shall appoint one of the members to serve as the chairperson of the commission.

(b) The commission shall meet upon the call of the chairperson or upon the request of three members. The commission shall organize itself as it deems appropriate and may elect additional officers from among its members.

(c) Any vacancy on the commission shall be filled for the unexpired term by appointment by the original appointing authority.

(d) Members of the commission shall serve without compensation but shall receive the same expense allowance per day as that received by a member of the General Assembly for each day such member of the commission is in attendance at a meeting of such commission, plus either reimbursement for actual transportation costs while traveling by public carrier or the same mileage allowance for use of a personal car in connection with such attendance as members of the General Assembly receive. Such expense and travel allowance shall be paid in lieu of any per diem, allowance, or other remuneration now received by any such member for such attendance. (Code 1981, § 31-11-101, enacted by Ga. L. 2007, p. 36, § 1/SB 60; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214.)

The 2011 amendment, effective July 1, 2011, substituted “Department of Public Health” for “Department of Community Health” in the first sentence of subsection (a).

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

31-11-102. Duties and responsibilities.

The Georgia Trauma Care Network Commission shall have the following duties and responsibilities:

(1) To apply for, receive, and administer state funds appropriated to the commission and federal funds and grants, private grants and donations, and other funds and donations. The commission's annual distributions shall be capped and limited to funds received from the sources specified in this paragraph. The commission shall ensure that its funds are not used as a supplement or secondary payor to any other third-party payor;

(2) For the first two fiscal years in which funds are appropriated to the commission for distribution, to distribute such funds in the following areas with the priority for distribution to be set by majority vote of the commission:

(A) Physician uncompensated trauma care services provided in designated trauma centers;

(B) Emergency medical service uncompensated trauma care services provided to patients transported to designated trauma centers and to trauma patients transported to out-of-state hospitals as approved by the commission;

(C) Uncompensated trauma care services of designated trauma centers;

(D) Trauma care readiness costs for designated or certified trauma care service providers; and

(E) Trauma care service start-up costs for providers seeking a trauma care designation or certification.

The commission shall adopt a formula that prioritizes the distribution of state appropriated funds that may be implemented during the third state fiscal year in which funds are appropriated to the commission for distribution. Such formula shall be evaluated and modified, if needed, every two years thereafter;

(3) To develop, implement, administer, and maintain a system to compensate designated trauma centers for a portion of their cost of readiness through a semiannual distribution from the Georgia Trauma Trust Fund in a standardized amount determined by the commission. The standardized amounts shall be determined according to designation level and shall be capped at that specific amount. Initially, such standardized amount shall be based upon a three-year average of annual trauma cases, annual amount of uncompensated trauma care services administered, and a three-year annual average

cost of readiness. Such criteria may be changed by a majority vote of the commission. Total annual distributions for trauma center and emergency medical service readiness shall be capped at an amount set by the commission. However, the standards developed by the commission for readiness shall include, but are not limited to, the following:

(A) Criteria assuring the trauma fund is a payor of last resort;

(B) Criteria assuring that all other resources must be exhausted before the trauma funds are allocated; and

(C) Criteria assuring that trauma funds must be used to meet a verified need that assists the trauma center to maintain a trauma center designation;

(4) To develop, implement, administer, and maintain a system to provide additional designated trauma center compensation to cover trauma center costs not associated with readiness based upon an application and review based process. These distributions shall be capped and limited to semiannual appropriations received by the commission. Designated trauma centers shall submit an application for trauma funds reimbursement semiannually. The application process developed by the commission for such costs shall include, but is not limited to, the following:

(A) Criteria assuring that the trauma fund is a payor of last resort;

(B) Criteria assuring that trauma funds shall be used for reimbursement for services provided to designated trauma patients;

(C) Criteria assuring that trauma funds shall be used for reimbursement for trauma service codes;

(D) Criteria assuring that trauma funds used for reimbursement for trauma care costs shall be on a fee schedule or grant basis; provided, however, that no reimbursement shall exceed the average rate reimbursed for similar services under the State Health Benefit Plan; and

(E) Criteria that require the trauma center to submit a semiannual report documenting and verifying the use of such funds;

(5) To develop, implement, administer, and maintain a system to compensate physicians who provide uncompensated call and trauma care services. This reimbursement shall be distributed on a semiannual basis and paid on a formula to be set by the commission. The call hours must be documented and verified by the trauma director at the appropriate trauma center in order to receive such funds. The

formula developed by the commission for reimbursement shall include, but is not limited to, the following:

(A) Criteria assuring that the trauma fund is a payor of last resort;

(B) Criteria assuring that trauma funds shall be used for reimbursement for services provided to designated trauma patients;

(C) Criteria assuring that trauma funds used for reimbursement for physician costs shall be on a fee schedule or grant basis; provided, however, that no reimbursement shall exceed the average rate reimbursed for similar services under the State Health Benefit Plan; and

(D) Criteria assuring that trauma funds shall be used for reimbursement for trauma service codes;

(6) To reserve and disburse additional moneys to increase the number of participants in the Georgia trauma system. These funds shall be disbursed through an application process to cover partial start-up costs for nondesignated acute care facilities to enter the system as Level II, III, or IV trauma centers. The application process developed by the commission for start-up costs shall include, but is not limited to, the following:

(A) Criteria assuring that the trauma fund is a payor of last resort;

(B) Criteria assuring that all other resources for start-up costs must be exhausted before the trauma funds are allocated;

(C) Criteria assuring that the distribution of trauma funds will result in the applicant's achieving a trauma designation as defined by the commission within the time frame specified on the application;

(D) Criteria assuring and verifying that the Department of Public Health has determined that there is a need for an additional trauma center with the designation that the applicant is seeking; and

(E) Criteria assuring that no more than 15 percent of the total annual distribution from the trauma fund total shall be distributed for new trauma center development;

(7)(A) To develop, implement, administer, and maintain a system to compensate members of the emergency medical service transportation community for readiness and uncompensated trauma care.

(B) The compensation for the cost of readiness shall be through an application process adopted by the commission. The application

process developed by the commission for readiness costs shall include, but is not limited to, the following:

- (i) Criteria assuring that the trauma fund is a payor of last resort;
- (ii) Criteria assuring that all other resources for readiness costs must be exhausted before the trauma funds are allocated;
- (iii) Criteria assuring that the distribution of trauma funds will result in the applicant's achieving certification as defined by the commission within the time frame specified on the application; and
- (iv) Criteria assuring and verifying that the Department of Public Health has determined that there is a need for additional emergency medical services with the certification that the applicant is seeking.

(C) The commission shall develop a formula for reimbursing emergency medical services uncompensated trauma care services. The formula developed by the commission for reimbursement shall include, but is not limited to, the following:

- (i) Criteria assuring that the trauma fund is a payor of last resort;
- (ii) Criteria assuring that trauma funds shall be used for reimbursement for services provided to designated trauma patients; and
- (iii) Criteria assuring that trauma funds used for reimbursement of emergency medical service costs shall be on a fee schedule or grant basis; provided, however, that no reimbursement shall exceed the average rate reimbursed for similar services under the State Health Benefit Plan;

(8) To appropriate, out of the Georgia Trauma Trust Fund, annual moneys for investment in a system specifically for trauma transportation. The purpose of this system is to provide transport to trauma victims where current options are limited. The commission shall promulgate rules and regulations for such system and shall pursue contracts with existing state transportation structures or create a contractual arrangement with existing transportation organizations. The commission shall also be responsible for creating, maintaining, and overseeing a foundation to raise funds specifically for investment in this system and overall trauma funding;

(9) To act as the accountability mechanism for the entire Georgia trauma system, primarily overseeing the flow of funds from the Georgia Trauma Trust Fund into the system. The State Office of

EMS/Trauma shall receive an annual distribution from the commission of not more than 3 percent of the total annual distribution from the fund in the fiscal year. These funds shall be used for the administration of an adequate system for monitoring state-wide trauma care, recruitment of trauma care service providers into the network as needed, and for research as needed to continue to operate and improve the system;

(10) To coordinate its activities with the Department of Public Health;

(11) To employ and manage staff and consultants in order to fulfill its duties and responsibilities under this article;

(12) To establish, maintain, and administer a trauma center network to coordinate the best use of existing trauma facilities in this state and to direct patients to the best available facility for treatment of traumatic injury;

(13) To coordinate, assist, establish, maintain, and administer programs designed to educate the citizens of this state on trauma prevention;

(14) To coordinate and assist in the collection of data to evaluate the provision of trauma care services in this state;

(15) To study the provision of trauma care services in this state to determine the best practices and methods of providing such services, to determine what changes are needed to improve the provision of trauma care services, and to report any proposed legislative changes to the General Assembly each year; and

(16) To employ an executive director and other staff and to establish duties and responsibilities of such persons. (Code 1981, § 31-11-102, enacted by Ga. L. 2007, p. 36, § 1/SB 60; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 539, § 3/SB 76; Ga. L. 2011, p. 705, § 6-3/HB 214.)

The 2011 amendments. — The first 2011 amendment, effective July 1, 2011, added “and to trauma patients transported to out-of-state hospitals as approved by the commission” in subparagraph (2)(B). The second 2011 amendment, effective July 1, 2011, substituted “Department of Public Health” for “Department of Community Health” in subparagraph (6)(D), division (7)(B)(iv), and paragraph (10).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2007, a period was substituted for a comma at the end of subparagraph (2)(E) and “an” was deleted following “is a need for” in division (7)(B)(iv).

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

31-11-103. Georgia Trauma Trust Fund.

(a) There is established the Georgia Trauma Trust Fund. The executive director of the Georgia Trauma Care Network Commission shall serve as the trustee of the Georgia Trauma Trust Fund. The moneys deposited into such fund pursuant to this article may be expended by the executive director with the approval of the Georgia Trauma Care Network Commission for those purposes specified in Code Section 31-11-102.

(b) The Georgia Trauma Care Network Commission shall report annually to the House Committee on Health and Human Services and the Senate Health and Human Services Committee. Such report shall provide an update on state-wide trauma system development and the impact of fund distribution on trauma patient care and outcomes. (Code 1981, § 31-11-103, enacted by Ga. L. 2007, p. 36, § 1/SB 60; Ga. L. 2012, p. 1177, § 1/SB 489.)

The 2012 amendment, effective July 1, 2012, designated the previously existing provisions of this Code section as subsection (a) and added subsection (b).

ARTICLE 6
SYSTEM OF CERTIFIED STROKE CENTERS

Editor’s notes. — Ga. L. 2008, p. 1102, § 1/SB 549, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘Coverdell-Murphy Act’ in honor of the late Georgia Congressman Paul D. Coverdell and the late Georgia Speaker of the House of Representatives Thomas B. Murphy, both revered politicians of the great State of Georgia, and victims of massive strokes.”

31-11-110. Legislative findings.

The General Assembly finds and declares that:

- (1) The rapid identification, diagnosis, and treatment of stroke can save the lives of stroke victims and in some cases can reverse neurological damage such as paralysis and speech and language impairments, leaving stroke victims with few or no neurological deficits;
- (2) Despite significant advances in diagnosis, treatment and prevention, stroke is the third leading cause of death and the biggest cause of disability in this country; an estimated 700,000 to 750,000 new and recurrent strokes occur each year in this country and with the aging of the population, the number of persons who have strokes is projected to increase;
- (3) Although new treatments are available to improve the clinical outcomes of stroke, many acute care hospitals often face challenges in

obtaining staff and equipment required to optimally triage and treat stroke patients, including the provision of optimal, safe, and effective emergency care for these patients;

(4) Although the Georgia Coverdell Acute Stroke Registry currently exists within the Department of Public Health as a program whose purpose is to increase improvement of the quality of acute stroke care through collaborative efforts with participating hospitals in this state, less than one-third of Georgia's hospitals are currently enrolled in the program. Therefore increased participation in and funding of this program in conjunction with the adherence to the tenets of this article would have profound effects on the quality of care for acute stroke victims in this state;

(5) An effective system to support stroke survival is needed in our communities in order to treat stroke victims in a timely manner and to improve the overall treatment of stroke victims in order to increase survival and decrease the disabilities associated with stroke. There is a public health need for acute care hospitals in this state to establish stroke centers to ensure the rapid triage, diagnostic evaluation, and treatment of patients suffering a stroke;

(6) Two levels of stroke centers should be established for the treatment of acute stroke:

(A) Primary stroke centers should be established in as many acute care hospitals as possible to evaluate, stabilize, and provide or arrange for treatment, care, and rehabilitative services to patients diagnosed with acute stroke; and

(B) Because access to stroke care is limited in the rural areas of the state due to the limited availability of professional specialists, high-tech imaging equipment, and transportation services, remote treatment stroke centers should be established to evaluate, stabilize, and provide treatment to patients diagnosed with acute stroke in rural portions of the state;

(7) Coordination between primary stroke centers and remote treatment stroke centers should be encouraged through the establishment of coordinated stroke care agreements between primary stroke centers and remote treatment stroke centers; and

(8) Therefore, it is in the best interest of the residents of this state to establish a program to identify certified stroke centers throughout the state, to provide specific patient care and support services criteria that stroke centers must meet in order to ensure that stroke patients receive safe and effective care, and to provide financial support to acute care hospitals to encourage them to develop stroke centers in all areas of the state. Further, it is in the best interest of the people

of this state to modify the state's emergency medical response system to assure that stroke victims may be quickly identified and transported to and treated in facilities that have specialized programs for providing timely and effective treatment for stroke victims. (Code 1981, § 31-11-110, enacted by Ga. L. 2008, p. 1102, § 2/SB 549; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214.)

The 2011 amendment, effective July 1, 2011, substituted "Department of Public Health" for "Department of Community Health" in the first sentence of paragraph (4).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2008, in para-

graph (5), "a" was deleted following "increase survival and" in the first sentence, and a comma was inserted following "evaluation" in the second sentence.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

31-11-111. "Department" defined.

As used in this article, the term "department" means the same state agency or state board which regulates emergency medical services personnel and providers pursuant to this chapter. (Code 1981, § 31-11-111, enacted by Ga. L. 2008, p. 1102, § 2/SB 549.)

31-11-112. Identification of primary or remote treatment stroke centers.

(a) The department shall identify hospitals that meet the criteria set forth in this article as primary or remote treatment stroke centers.

(b) A hospital shall apply to the department for such identification and shall demonstrate to the satisfaction of the department that the hospital meets the applicable criteria set forth in Code Section 31-11-113.

(c) The department shall identify as many hospitals as primary or remote treatment stroke centers as apply for the identification, provided that each applicant meets the applicable criteria set forth in Code Section 31-11-113.

(d) The department may suspend or revoke a hospital's identification as a primary or remote treatment stroke center, after notice and hearing, if the department determines that the hospital is not in compliance with the requirements of this article. (Code 1981, § 31-11-112, enacted by Ga. L. 2008, p. 1102, § 2/SB 549.)

31-11-113. Certification; application process; inspections.

(a) A hospital identified as a primary stroke center shall be certified as such by a nationally recognized health care accreditation body. Any hospital wishing to receive official identification under this Code section

must submit a written application to the department, providing adequate documentation of the hospital's valid certification as a primary stroke center by the commission.

(b) Remote treatment stroke centers shall be certified and identified by the department through an application process to be determined by the department. Said process shall contain, at minimum, the following requirements:

(1) Remote treatment stroke center certifications and identifications by the department are limited to those hospitals that utilize current and acceptable telemedicine protocols relative to acute stroke treatment as defined by the department;

(2) Upon receipt of complete and proper application for certification as a remote treatment stroke center, the department shall schedule and conduct an inspection of the applicant's facility no later than 90 days after receipt of application; and

(3) Any hospital, upon certification by the department as a remote treatment stroke center, shall automatically be identified as a remote treatment stroke center and shall be added to the list of such hospitals as defined in subsection (a) of Code Section 31-11-115.

(c) Primary stroke centers are encouraged to coordinate, through agreement, with remote treatment stroke centers throughout the state to provide appropriate access to care for acute stroke patients. The coordinating stroke care agreements shall be in writing and include at minimum:

(1) Transfer agreements for the transport and acceptance of all stroke patients seen by the remote treatment stroke center for stroke treatment therapies which the remote treatment stroke center is not capable of providing; and

(2) Communication criteria and protocols with the remote treatment stroke centers. (Code 1981, § 31-11-113, enacted by Ga. L. 2008, p. 1102, § 2/SB 549; Ga. L. 2012, p. 337, § 6/SB 361.)

The 2012 amendment, effective July 1, 2012, substituted "a nationally recognized health care accreditation body" for

"the Joint Commission on Accreditation of Healthcare Organizations" in the first sentence of subsection (a).

31-11-114. Grants; report.

(a) In order to encourage and ensure the establishment of stroke centers throughout the state, the department shall award grants, subject to appropriations from the General Assembly, to hospitals that seek identification as remote treatment stroke centers and demonstrate a need for financial assistance to develop the necessary infrastructure,

including personnel and equipment, in order to satisfy the criteria for identification as a remote treatment stroke center pursuant to subsection (b) of Code Section 31-11-113.

(b) A hospital seeking identification as a remote treatment stroke center pursuant to this article may apply to the department for a grant, in a manner and on a form required by the department, and provide such information as the department deems necessary to determine if the hospital is eligible for the grant.

(c) The department may provide grants to as many hospitals as it deems appropriate, subject to appropriations, taking into consideration adequate geographic diversity with respect to locations.

(d) The department shall, not later than September 1, 2009, prepare and submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives a report indicating, as of June 30, 2009, the total number of hospitals that have applied for grants pursuant to this Code section, the number of applicants that have been determined by the department to be eligible for such grants, the total number of grants to be awarded, the name and address of each grantee hospital, the amount of the award to each grantee, the amount of each award to be disbursed to the grantee, and whether or not, in the opinion of the department, each grantee would be able to attain identification as a remote treatment stroke center pursuant to subsection (b) of Code Section 31-11-113. (Code 1981, § 31-11-114, enacted by Ga. L. 2008, p. 1102, § 2/SB 549.)

31-11-115. Distribution of list of state identified stroke centers to emergency medical services providers; development of a model stroke triage assessment tool; assessment, treatment, and transport of stroke patients.

(a) Beginning June 1, 2009, and each year thereafter, the department shall send the list of primary and remote treatment stroke centers identified pursuant to Code Section 31-11-113 to the medical director of each licensed emergency medical services provider in this state, shall maintain a copy of the list in the office designated with the department to oversee emergency medical services, and shall post a list of primary and remote treatment stroke centers on the department's website.

(b) The department shall adopt or develop a sample stroke triage assessment tool. The department shall post this sample assessment tool on its website and distribute a copy of the sample assessment tool to each licensed emergency medical services provider no later than December 31, 2008. Each licensed emergency medical services provider shall use a stroke triage assessment tool that is substantially similar to the sample stroke triage assessment tool provided by the department.

(c) The office designated within the department to oversee emergency medical services shall establish protocols related to the assessment, treatment, and transport of stroke patients by licensed emergency medical services providers in this state. (Code 1981, § 31-11-115, enacted by Ga. L. 2008, p. 1102, § 2/SB 549.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2008, “to” was inserted preceding “the medical director” in subsection (a).

31-11-116. Annual reports.

(a) In order to assure that the patients are receiving the appropriate level of care and treatment at each primary stroke center in the state, each hospital identified as a primary stroke center shall annually report the following information to the department:

- (1) The number of patients evaluated;
- (2) The number of patients receiving acute interventional therapy;
- (3) The amount of time from patient presentation to delivery of acute interventional therapy;
- (4) Patient length of stay;
- (5) Patient functional outcome;
- (6) Patient morbidity;
- (7) Deep vein thrombosis prophylaxis given;
- (8) Number of patients discharged on antiplatelet or antithrombotics medication;
- (9) Number of patients with atrial fibrillation receiving anticoagulation therapy;
- (10) Patients on which the administration of tissue plasminogen activator was considered;
- (11) Antithrombotic medication administered within 48 hours of hospitalization;
- (12) Number of lipid profiles ordered during hospitalization;
- (13) Number of screens for dysphagia performed;
- (14) Stroke education provided;
- (15) Number of smoking cessation programs provided or discussed;
- (16) The number of patients assessed for rehabilitation and whether a plan for rehabilitation was considered;

(17) The number of emergency medical services stroke patients who were transported to the facility;

(18) The number of emergency medical services stroke patients who were admitted to the facility;

(19) The number and percentage of stroke cases treated with intravenous or intra-arterial tissue plasminogen activator; and

(20) The number of patients discharged on cholesterol reducing medication.

(b) In order to assure that the patients are receiving the appropriate level of care and treatment at each remote treatment stroke center in the state, each hospital identified as a remote treatment stroke center shall annually report the following information to the department:

(1) The number of patients evaluated;

(2) The number of patients receiving acute interventional therapy;

(3) The amount of time from patient presentation to delivery of acute interventional therapy;

(4) Patient length of stay;

(5) The number of emergency medical services stroke patients who were transported to the facility;

(6) The number of emergency medical services stroke patients who were admitted to the facility; and

(7) The number and percentage of stroke cases treated with intravenous or intra-arterial tissue plasminogen activator.

(c) The department shall collect the information reported pursuant to subsections (a) and (b) of this Code section and shall post such information in the form of a report card annually on the department's website and present such report to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The results of this report card may be used by the department to conduct training with the identified facilities regarding best practices in the treatment of stroke.

(d) In no way shall this article be construed to require disclosure of any confidential information or other data in violation of the federal Health Insurance Portability and Accountability Act of 1996, P.L. 104-191. (Code 1981, § 31-11-116, enacted by Ga. L. 2008, p. 1102, § 2/SB 549.)

31-11-117. Statutory construction.

This article shall not be construed to be a medical practice guideline and shall not be used to restrict the authority of a hospital to provide

services for which it has received a license under state law. The General Assembly intends that all patients be treated individually based on each patient's needs and circumstances. (Code 1981, § 31-11-117, enacted by Ga. L. 2008, p. 1102, § 2/SB 549.)

31-11-118. Advertising.

A hospital may not advertise to the public, by way of any medium whatsoever, that it is identified by the state as a primary or remote treatment stroke center unless the hospital has been identified as such by the department pursuant to this article. (Code 1981, § 31-11-118, enacted by Ga. L. 2008, p. 1102, § 2/SB 549.)

31-11-119. Rules and regulations.

The department shall be authorized to promulgate rules and regulations to carry out the purposes of this article. (Code 1981, § 31-11-119, enacted by Ga. L. 2008, p. 1102, § 2/SB 549.)

CHAPTER 12

CONTROL OF HAZARDOUS CONDITIONS, PREVENTABLE DISEASES, AND METABOLIC DISORDERS

Sec.		Sec.	
31-12-1.	Power to conduct research and studies.		ous illness, severe physical or developmental disability, and death resulting from inherited metabolic and genetic disorders.
31-12-1.1.	"Bioterrorism" and "public health emergency" defined.		
31-12-2.	Reporting disease; confidentiality; reporting required of pharmacists; immunity from liability as to information supplied; notification of potential bioterrorism.	31-12-7.	Rules and regulations regarding tests for sickle cell anemia, sickle cell trait, and other metabolic and genetic disorders; counseling; fees.
31-12-2.1.	Investigation of potential bioterrorism activity; regulations and planning for public health emergencies.	31-12-8.	Occupational health and safety.
31-12-3.	Power to require immunization and other preventive measures.	31-12-9.	Importation, sale, and breeding of animals and birds to be kept as pets.
31-12-3.1.	Vaccination registry; reporting requirements, maintenance, and use.	31-12-10.	Right of entry to facility.
31-12-3.2.	Meningococcal disease; vaccinations; disclosures.	31-12-11.	Abating operation of bath-houses.
31-12-4.	Isolation and segregation of diseased persons; quarantine.	31-12-12.	Restrictions on sale or dispensing of contact lenses; responsibilities relating to prescriptions; criminal violation; enforcement.
31-12-4.1.	Smallpox vaccination and treatment program.	31-12-13.	Definitions concerning bloodborne pathogens; standards; funds for research and development.
31-12-5.	State-wide network for medical genetics services.	31-12-14.	Cancer research program fund; contributions; accounting.
31-12-6.	System for prevention of seri-		

Administrative rules and regulations. — Notification of disease, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Human Resources (now the Department of Community Health for these purposes), Chapter 290-5-3.

Immunization of children as a prerequisite to admission to schools and other facilities, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Human Resources (now the Department of Community Health for

these purposes), Public Health, Chapter 290-5-4.

Tuberculosis control, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Human Resources, Public Health, Chapter 290-5-16.

Serologic test for syphilis for pregnant women, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Human Resources, Public Health, Chapter 290-5-21.

Law reviews. — For comment, "Public

Health vs. Patient Rights: Reconciling Informed Consent with HPR Vaccination,” see 58 Emory L.J. 761 (2009). For comment, “Test At Your Own Risk: Your Ge-

netic Report Card and the Direct-To-Consumer Duty to Secure Informed Consent,” see 59 Emory L.J. 1553 (2010).

OPINIONS OF THE ATTORNEY GENERAL

Confidential screening for the HTLV-III/LAV (AIDS) virus in convicted prostitutes may be required: (1) as a health measure by the Depart-

ment of Human Resources; or (2) as a condition of probation by the sentencing court. 1986 Op. Att’y Gen. No. 86-19.

31-12-1. Power to conduct research and studies.

The Department of Public Health and county boards of health are empowered to conduct studies, research, and training appropriate to the prevention of diseases and accidents, the use and control of toxic materials, and the prevention of environmental conditions which, if permitted to develop or continue, would likely endanger the health of individuals or communities. (Code 1933, § 88-1201, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214.)

The 2011 amendment, effective July 1, 2011, substituted “Department of Public Health” for “Department of Community Health” at the beginning of this Code section.

Cross references. — Hazardous waste management, § 12-8-60 et seq.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

31-12-1.1. “Bioterrorism” and “public health emergency” defined.

As used in this chapter, the term:

(1) “Bioterrorism” means the intentional creation or use of any microorganism, virus, infectious substance, or any component thereof, whether naturally occurring or bioengineered, to cause death, illness, disease, or other biological malfunction in a human, animal, plant, or other living organism in order improperly or illegally to influence the conduct of government, to interfere with or disrupt commerce, or to intimidate or coerce a civilian population.

(2) “Public health emergency” means the occurrence or imminent threat of an illness or health condition that is reasonably believed to be caused by bioterrorism or the appearance of a novel or previously controlled or eradicated infectious agent or biological toxin and poses a high probability of any of the following harms:

(A) A large number of deaths in the affected population;

(B) A large number of serious or long-term disabilities in the affected population; or

(C) Widespread exposure to an infectious or toxic agent that poses a significant risk of substantial future harm to a large number of people in the affected population. (Code 1981, § 31-12-1.1, enacted by Ga. L. 2002, p. 1386, § 5.)

Cross references. — Domestic terrorism, T. 16, C. 11, A. 1, P. 2. War on terrorism, § 16-4-10. Sedition and subversive activities, T. 16, C. 11, A. 1, P. 2. War on terrorism local assistance, T. 36, C. 75.

31-12-2. Reporting disease; confidentiality; reporting required of pharmacists; immunity from liability as to information supplied; notification of potential bioterrorism.

(a) The department is empowered to declare certain diseases, injuries, and conditions to be diseases requiring notice and to require the reporting thereof to the county board of health and the department in a manner and at such times as may be prescribed. The department shall require that such data be supplied as are deemed necessary and appropriate for the prevention of certain diseases, injuries, and conditions as are determined by the department. All such reports and data shall be deemed confidential and shall not be open to inspection by the public; provided, however, the department may release such reports and data in statistical form or for valid research purposes.

(b) A health care provider, coroner, or medical examiner shall report to the department and the county board of health all known or presumptively diagnosed cases of persons harboring any illness or health condition that may be caused by bioterrorism, epidemic or pandemic disease, or novel and highly fatal infectious agents or toxins and that may pose a substantial risk of a public health emergency. Reportable illnesses and conditions include, without limitation, diseases caused by biological agents listed at 42 C.F.R. Part 72, app. A (2000) and any illnesses or conditions identified by the department as potential causes of a public health emergency.

(c) A pharmacist shall report to the department and the county board of health any unusual or increased prescription rates, unusual types of prescriptions, or unusual trends in pharmacy visits that may reasonably be believed to be caused by bioterrorism, epidemic or pandemic disease, or novel and highly fatal infectious agents or toxins and that may pose a substantial risk of a public health emergency.

(d) Any person, including but not limited to practitioners of the healing arts, submitting in good faith reports or data to the department or county boards of health in compliance with the provisions of this Code section shall not be liable for any civil damages therefor.

(e) Whenever the department learns of any case of an unusual illness, health condition, or death, or an unusual cluster of such events,

or any other suspicious health related event that it reasonably believes has the potential to be caused by bioterrorism, it shall immediately notify the Department of Public Safety and other appropriate public safety authorities. (Code 1933, § 88-1202, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1982, p. 1077, §§ 2, 4; Ga. L. 2002, p. 1386, § 6.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1996, the hyphen was deleted from “good faith” in subsection (b) (now subsection (d)).

Law reviews. — For note on the 2002 amendment of this Code section, see 19 Ga. St. U.L. Rev. 1 (2002).

JUDICIAL DECISIONS

Failure to report. — Reporting required by O.C.G.A. § 31-12-2 is for statistical purposes; thus, a physician’s failure to report a patient’s genital herpes did not

cause the patient any injury. *Vance v. T.R.C.*, 229 Ga. App. 608, 494 S.E.2d 714 (1997).

31-12-2.1. Investigation of potential bioterrorism activity; regulations and planning for public health emergencies.

(a) The department shall ascertain the existence of any illness or health condition that may be caused by bioterrorism, epidemic or pandemic disease, or novel and highly fatal infectious agents or toxins and that may pose a substantial risk of a public health emergency; investigate all such cases to determine sources of infection and to provide for proper control measures; and define the distribution of the illness or health condition. The department shall:

(1) Identify, interview, and counsel, as appropriate, all individuals reasonably believed to have been exposed to risk;

(2) Develop information relating to the source and spread of the risk; and

(3) Close, evacuate, or decontaminate, as appropriate, any facility and decontaminate or destroy any contaminated materials when the department reasonably suspects that such material or facility may endanger the public health.

(b) The department shall promulgate rules and regulations appropriate for management of any public health emergency declared pursuant to the provisions of Code Section 38-3-51, with particular regard to coordination of the public health emergency response of the state pursuant to subsection (i) of said Code section. Such rules and regulations shall be applicable to the activities of all entities created pursuant to Chapter 3 of this title in such circumstances, notwithstanding any other provisions of law. In developing such rules and regulations, the department shall consult and coordinate as appropriate with the Georgia Emergency Management Agency, the Federal Emergency Man-

agement Agency, the Georgia Department of Public Safety, the Georgia Department of Agriculture, and the federal Centers for Disease Control and Prevention. The department is authorized, in the course of management of a declared public health emergency, to adopt and implement emergency rules and regulations pursuant to the provisions of subsection (b) of Code Section 50-13-4. Such rules and regulations shall be adopted pursuant to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," but shall be automatically referred by the Office of Legislative Counsel to the House of Representatives and Senate Committees on Judiciary.

(c) The department shall promulgate, prepare, and maintain a public health emergency plan and draft executive order for the declaration of a public health emergency pursuant to Code Section 38-3-51 and Chapter 13 of Title 50. In preparation of such public health emergency plan and draft executive order, the department shall consult and coordinate as appropriate with the Georgia Emergency Management Agency, the Federal Emergency Management Agency, the Georgia Department of Public Safety, the Georgia Department of Agriculture, and the federal Centers for Disease Control and Prevention. (Code 1981, § 31-12-2.1, enacted by Ga. L. 2002, p. 1386, § 7.)

31-12-3. Power to require immunization and other preventive measures.

(a) The department and all county boards of health are empowered to require, by appropriate rules and regulations, persons located within their respective jurisdictions to submit to vaccination against contagious or infectious disease where the particular disease may occur, whether or not the disease may be an active threat. The department may, in addition, require such other measures to prevent the conveyance of infectious matter from infected persons to other persons as may be necessary and appropriate. The department shall promulgate appropriate rules and regulations for the implementation of the provisions of this Code section in the case of a declaration of a public health emergency and shall include provisions permitting consideration of the opinion of a person's personal physician as to whether the vaccination is medically appropriate or advisable for such person. Such rules and regulations shall be adopted pursuant to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," but shall be automatically referred by the Office of Legislative Counsel to the House of Representatives and Senate Committees on Judiciary.

(b) In the absence of an epidemic or immediate threat thereof, this Code section shall not apply to any person who objects in writing thereto on grounds that such immunization conflicts with his religious beliefs. (Code 1933, § 88-1203, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 2002, p. 1386, § 8.)

Law reviews. — For note on the 2002 amendment of this Code section, see 19 Ga. St. U. L. Rev. 1 (2002).

JUDICIAL DECISIONS

Right to object to immunization on religious grounds not found. — Right to lodge religious objection to a child's immunization pursuant to O.C.G.A. § 20-2-771(e), O.C.G.A. § 31-12-3(b), or O.C.G.A. § 49-4-183(b)(10)(C) was not a

residual right of the child's parents under O.C.G.A. § 15-11-13; thus, the mother of a child found to be deprived could not object to the immunization of the child on religious grounds. In re C.R., 257 Ga. App. 159, 570 S.E.2d 609 (2002).

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Health, §§ 41 et seq., 53, 66 et seq., 76 et seq.

C.J.S. — 16 C.J.S., Constitutional Law, §§ 279, 302, 303, 346, 347. 17 C.J.S., Constitutional Law, §§ 472, 498, 566, 595, 733, 856. 39A C.J.S., Health and Environment, §§ 20 et seq., 32 et seq. 79 C.J.S., Schools and School Districts, §§ 453, 454, 469.

ALR. — Power of court or other public agency to order medical treatment over parental religious objections for child whose life is not immediately endangered, 21 ALR5th 248.

Power of court or other public agency to order vaccination over parental religious objection, 94 ALR5th 613.

31-12-3.1. Vaccination registry; reporting requirements, maintenance, and use.

(a) The department, for purposes of establishing and maintaining a single repository of accurate, complete, and current vaccination records to be used in aiding, coordinating, and promoting effective and cost-efficient disease prevention and control efforts, shall establish and maintain a vaccination registry.

(b) Any person who administers a vaccine or vaccines licensed for use by the United States Food and Drug Administration to a person shall for each such vaccination provide to the department such data as are deemed by the department to be necessary and appropriate for purposes of the vaccination registry established pursuant to subsection (a) of this Code section, including, without limitation:

- (1) The name of the person;
- (2) The person's date and place of birth, including the name of the hospital where delivered, if applicable;
- (3) The names and addresses of the person's parents or guardians if the person is 18 years of age or younger;
- (4) The date of the vaccination and the specific type or types of vaccine or vaccines administered to the person on that date; and
- (5) Complications or side effects resulting from a vaccination, if any.

Vaccination data reporting requirements, including without limitation the types of data required to be reported and the time and manner of reporting such data, shall begin after the registry has established linkages to vaccine providers and shall be established by the department in consultation with the United States Centers for Disease Control and Prevention, the Georgia chapter of the American Academy of Pediatrics, and the Georgia Academy of Family Physicians.

(c) The department shall utilize the registry to provide notices, whether by mail, telephone, personal contact, or other means, to persons and to parents or guardians regarding their children or wards who are due or overdue for a particular type of vaccination according to recommended vaccination schedules. The department shall consult with medical services providers to determine the most effective and efficient manner of using the registry to provide such notices.

(d) Vaccination records for any person included within the vaccination registry shall be maintained as part of the registry until the person's death.

(e) Individually identifiable vaccination information regarding a person may be provided to the department by, or released by the department to, a local health department, hospital, physician, or other provider of medical services to the person or to a school or child care facility in which the person is enrolled if the person is 18 years of age or younger without the consent of the person or the person's parents or guardians. All persons shall be enrolled unless a specific exemption is requested by the person or the person's parent or guardian if the person is 18 years of age or younger. A parent or guardian may obtain and upon request to the department shall be provided with all individually identifiable vaccination registry information regarding his or her child or ward. Except as provided otherwise by this Code section, individually identifiable vaccination registry information shall be treated as confidential and shall not be released to a third party without consent of the person or the person's parent or guardian if the person is 18 years of age or younger.

(f) Nothing in this Code section shall:

(1) Prohibit the department from providing or publishing registry information in aggregate form for scientific, educational, or public health purposes, provided that such information is published without releasing or identifying individual names contained in the registry;

(2) Prohibit the department or any medical services provider from notifying a person or the person's parent or guardian if the person is 18 years of age or younger of the person's vaccination status or of a vaccination that is due or overdue according to recommended vaccination schedules; or

(3) Diminish a parent's or guardian's responsibility for having a child vaccinated properly.

(g) Any person, including but not limited to practitioners of the healing arts, submitting or obtaining in good faith vaccination reports or data to or from the department in compliance with the provisions of this Code section and any rules or regulations promulgated pursuant to this Code section shall not be liable for any civil damages therefor.

(h) The department is authorized to accept any grants, gifts, awards, and funds from government, public, and private sources to supplement any appropriation made for the purpose of funding the provisions of this Code section.

(i) The department is authorized and directed to promulgate such rules and regulations as are necessary and appropriate to implement the provisions of this Code section. (Code 1981, § 31-12-3.1, enacted by Ga. L. 1996, p. 646, § 1; Ga. L. 2004, p. 439, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Health,
§ 66 et seq.

31-12-3.2. Meningococcal disease; vaccinations; disclosures.

(a) Every public and nonpublic postsecondary educational institution shall provide to each newly admitted freshman or matriculated student residing in campus housing as defined by the postsecondary educational institution or to the student's parent or guardian if the student is a minor, the following information:

(1) Meningococcal disease is a serious disease that can lead to death within only a few hours of onset; one in ten cases is fatal; and one in seven survivors of the disease is left with a severe disability, such as the loss of a limb, developmental disability, paralysis, deafness, or seizures;

(2) Meningococcal disease is contagious but a largely preventable infection of the spinal cord fluid and the fluid that surrounds the brain;

(3) Scientific evidence suggests that college students living in dormitory facilities are at a moderately increased risk of contracting meningococcal disease; and

(4) Immunization against meningococcal disease will decrease the risk of the disease.

(b) Students who are 18 years of age or older shall be required to sign a document provided by the postsecondary educational institution

stating that he or she has received a vaccination against meningococcal disease or reviewed the information provided as required by subsection (a) of this Code section. If a student is a minor, only a parent or guardian may sign such document.

(c) Nothing in this Code section shall be construed to require any postsecondary educational institution to provide or pay for vaccinations of students against meningococcal disease.

(d) Any postsecondary educational institution that has made a reasonable effort to comply with this Code section shall not be liable for damages or injuries sustained by a student by reason of such student's contracting meningococcal disease. (Code 1981, § 31-12-3.2, enacted by Ga. L. 2003, p. 292, § 1; Ga. L. 2009, p. 453, § 3-6/HB 228.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2006, “institution” was substituted for “institution” in subsection (a).

31-12-4. Isolation and segregation of diseased persons; quarantine.

The department and all county boards of health may, from time to time, require the isolation or segregation of persons with communicable diseases or conditions likely to endanger the health of others. The department may, in addition, require quarantine or surveillance of carriers of disease and persons exposed to, or suspected of being infected with, infectious disease until they are found to be free of the infectious agent or disease in question. The department shall promulgate appropriate rules and regulations for the implementation of the provisions of this Code section in the case of a declaration of a public health emergency. Such rules and regulations shall be adopted pursuant to Chapter 13 of Title 50, the “Georgia Administrative Procedure Act,” but shall be automatically referred by the Office of Legislative Counsel to the House of Representatives and Senate Committees on Judiciary. (Code 1933, § 88-1204, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 2002, p. 1386, § 9.)

Law reviews. — For article, “Medical Decision-Making in Georgia,” see 10 Ga. St. B.J. 50 (2005).

For note on the 2002 amendment of this Code section, see 19 Ga. St. U.L. Rev. 1 (2002).

RESEARCH REFERENCES

Am. Jur. 2d. — 26 Am. Jur. 2d, Eminent Domain, § 60. 39 Am. Jur. 2d, Health, § 9 et seq. 39 Am. Jur. 2d, Habeas Corpus, § 88.

C.J.S. — 16 C.J.S., Constitutional Law, §§ 364, 371 et seq. 16D C.J.S., Constitu-

tional Law, § 2159 et seq. 29A C.J.S., Eminent Domain, § 47. 39 C.J.S., Habeas Corpus, § 99.

ALR. — Right of one detained pursuant to quarantine to habeas corpus, 2 ALR 1542.

Quarantine of typhoid carrier, 22 ALR 845.

AIDS infection as affecting right to attend public school, 60 ALR4th 15.

31-12-4.1. Smallpox vaccination and treatment program.

(a) The Georgia General Assembly makes the following findings: The attacks of September and October, 2001, on the United States have heightened concerns that terrorists may have access to the smallpox virus and may attempt to use it against the American public. In light of these concerns, and in order to secure public health and national security, the United States government has launched, and the State of Georgia has cooperated in, a smallpox vaccination and treatment program, with a recommendation for initial smallpox vaccinations for certain hospitals, health care workers, and emergency response workers. However, due to the virulent nature of smallpox and its vaccine, participation by hospitals and health care workers in such a program potentially increases their exposure to liability that, without sufficient legal protections, may significantly discourage their participation in the program. The federal government has determined, and the General Assembly agrees, that liability protection for those hospitals and health care workers who participate in such programs are integral to ensuring its maximum success. Accordingly, to achieve a potent and widespread smallpox vaccination and treatment program and maintain an effective defense against possible terrorist attacks, it is critical that hospitals and health care workers participating in such program be protected from potential legal liability absent their gross negligence or willful or wanton misconduct. The General Assembly therefore concludes that certain steps must be taken to encourage participation in the smallpox vaccination and treatment program in order to reserve to Georgia citizens continued access to smallpox vaccination and treatment services in the event of a terrorist attack.

(b) Without waiving or affecting and cumulative of any existing immunity from any source, unless it is established that injuries or death were caused by gross negligence or willful or wanton misconduct:

(1) No licensed hospital which participates in a smallpox vaccination and treatment program authorized by the United States Secretary of Health and Human Services or the United States Public Health Service of the State of Georgia or employees, agents, or health care workers of such hospital; and

(2) No licensed health care provider, health care worker, or other person who participates in such smallpox vaccination and treatment program, whether or not such provider, workers, or person is an agent or employee of said hospital

shall be liable for damages or injuries alleged to have been sustained by any individual by reason of such individual's receipt of a smallpox

vaccination or treatment, such individual's exposure to smallpox or its related infections, or any act or omission committed by said hospital, employee, agent, health care provider, health care worker, or other person as a result of such individual's receipt of services from or related to such smallpox vaccination and treatment program.

(c) This Code section shall apply only to causes of action arising on or after June 2, 2003. (Code 1981, § 31-12-4.1, enacted by Ga. L. 2003, p. 569, § 3.)

Cross references. — Immunization of students, § 20-2-771.

to Code Section 28-9-5, in 2003, "June 2, 2003" was substituted for "the effective date of this Code section" in subsection (c).

Code Commission notes. — Pursuant

31-12-5. State-wide network for medical genetics services.

(a) The department and appropriate medical centers shall cooperate in the development of a state-wide network for medical genetics.

(b) The network shall be available state-wide and will be responsible for training of personnel in genetics, research in inborn errors of metabolism, and quality control of laboratory services for genetics. This system shall also provide counseling regarding genetically caused disorders. (Code 1933, § 88-1203, enacted by Ga. L. 1978, p. 2262, § 2.)

Administrative rules and regulations. — Testing for inherited disorders in newborns, Official Compilation of the

Rules and Regulations of the State of Georgia, Department of Human Resources, Public Health, Chapter 290-5-24.

31-12-6. System for prevention of serious illness, severe physical or developmental disability, and death resulting from inherited metabolic and genetic disorders.

(a) The department shall promulgate rules and regulations creating a system for the prevention of serious illness, severe physical or developmental disability, and death caused by genetic conditions, such as phenylketonuria, galactosemia, homocystinuria, maple syrup urine disease, hypothyroidism, congenital adrenal hyperplasia, and such other inherited metabolic and genetic disorders as may be identified in the future to result in serious illness, severe physical or developmental disability, and death if undiagnosed and untreated. The system shall have five components: screening newborns for the disorders; retrieving potentially affected screenees back into the health care system; accomplishing specific diagnoses; initiating and continuing therapy; and assessing the program.

(b) The entire process for screening, retrieval, and diagnosis must occur within time frames established by the department pursuant to rules and regulations, and the system shall be structured to meet this critical need.

(c) The department shall be responsible for the screening of all newborns for the disorders enumerated and in a manner determined by the department pursuant to rules and regulations and shall be responsible for assessment of the program.

(d) The department shall, to the extent state or federal funds are available for such purposes, including but not limited to funds provided under Title V of the Social Security Act, the Maternal and Child Health Services Block Grant, provide for retrieving potentially affected screenees back into the health care system; accomplishing specific diagnoses; initiating and continuing therapy; and assessing the program.

(e) The department shall utilize appropriate existing resources whenever possible and shall cause the coordination and cooperation of agencies and organizations having resources necessary for the creation of an effective system.

(f) The department shall be authorized to establish and periodically adjust, by rule and regulation, fees associated with the screening, retrieval, and diagnosis conducted pursuant to this Code section to help defray or meet the costs incurred by the department. In no event shall the fees exceed such costs, both direct and indirect, in providing such screenings and related services, provided that no services shall be denied on the basis of inability to pay. All fees paid thereunder shall be paid into the general fund of the State of Georgia.

(g) The department shall allow any laboratory licensed in Georgia and authorized to perform screening testing of newborn infants in any state using normal pediatric reference ranges to conduct the analysis required pursuant to this Code section. The testing performed by such laboratory must include testing for newborn diseases as required by law or regulation and shall provide test results and reports consistent with law and with policies, procedures, and regulations of the department.

(h) No later than January 1, 2007, the Georgia Department of Audits and Accounts shall conduct an assessment evaluating the efficiency and effectiveness of the newborn screenings conducted by the Georgia Public Health Laboratory pursuant to this Code section. If it is determined that private laboratories can provide testing at a lower cost than the Georgia Public Health Laboratory, the department shall issue a request for proposals to qualified vendors including any private laboratory licensed in Georgia as established in subsection (g) of this Code section. The Georgia Public Health Laboratory shall be eligible to respond to such request for proposals.

(i) The requirements of this Code section with regard to screening, retrieval, and diagnosis shall not apply to any infant whose parents

object in writing thereto on the grounds that such tests and treatment conflict with their religious tenets and practices. (Code 1933, § 88-1202, enacted by Ga. L. 1978, p. 2262, § 1; Ga. L. 1989, p. 369, § 1; Ga. L. 1990, p. 8, § 31; Ga. L. 2006, p. 416, § 1/HB 1066.)

U.S. Code. — Title V of the Social Security Act, referred to in subsection (d) of this Code section, is codified as 42 U.S.C. § 701 et seq.

Law reviews. — For article, "Baby Doe Cases: Compromise and Moral Dilemma," see 34 Emory L.J. 545 (1986).

JUDICIAL DECISIONS

No private right of action for failure to notify of sickle cell disease. — Trial court properly granted the motion to dismiss or the motion for summary judgment filed by various defendants in a suit brought by plaintiff child, by and through the child's parent, which asserted negligence and negligence per se for failing to inform the plaintiff and the parent, at the time of the plaintiff's birth, that the plaintiff had sickle cell disease. The trial court properly ruled that no private right of

action exists for violation of O.C.G.A. § 31-12-7, and the appellate court clarified that there existed no statutory intent to impose strict liability for violating the notice requirement of § 31-12-7 and substantial compliance with the statute was all that was required, which was shown in that the defendants attempted to contact the plaintiff and the parent but were unable to locate them due to incorrect contact information. In re Carter, 288 Ga. App. 276, 653 S.E.2d 860 (2007).

31-12-7. Rules and regulations regarding tests for sickle cell anemia, sickle cell trait, and other metabolic and genetic disorders; counseling; fees.

(a) In coordination and association with the system established by the department for the screening, retrieval, and diagnosis of certain metabolic and genetic disorders pursuant to Code Section 31-12-6, the department, or its successor agency or department, shall adopt and promulgate appropriate rules and regulations governing tests for sickle cell anemia, sickle cell trait, and other metabolic and genetic disorders as enumerated by the department pursuant to rules and regulations so that as nearly as possible all newborn infants who are susceptible or likely to have sickle cell anemia, sickle cell trait, or other metabolic and genetic disorders shall receive a test for sickle cell anemia, sickle cell trait, or other metabolic and genetic disorders or all of such conditions as soon after birth as successful testing and treatment therefor may be initiated; provided, however, that this Code section shall not apply to any infant whose parents object thereto on the grounds that such tests and treatment conflict with their religious tenets and practices.

(b) If any such child is found to have sickle cell anemia or sickle cell trait, it shall be the duty of the examining physician or the department to inform the parents of such child that the child is so afflicted and, if such child has sickle cell anemia or sickle cell trait, that counseling regarding the nature of the disease, its effects, and its treatment is

available without cost from the department and the county board of health or county department of health.

(c) It shall be the duty of the department and each county board of health and county department of health, or their successor agencies or departments, to furnish counseling and advice to any persons requesting such counseling regarding sickle cell anemia or sickle cell trait, its characteristics, symptoms, traits, effects, and treatment. Such counseling shall be furnished without cost to the person requesting it.

(d) The department shall be authorized to establish and periodically adjust, by rule and regulation, fees associated with the screening, retrieval, and diagnosis conducted pursuant to this Code section to help defray or meet the costs incurred by the department; provided, however, that in no event shall the total fees associated with such screening, retrieval, and diagnosis exceed \$40.00 for the calendar year beginning January 1, 2007. In no event shall the fees exceed such costs, both direct and indirect, in providing such screenings and related services, provided that no services shall be denied on the basis of inability to pay. All fees paid thereunder shall be paid into the general fund of the State of Georgia. (Code 1933, § 88-1201.1, enacted by Ga. L. 1966, p. 140, § 1; Ga. L. 1972, p. 962, § 1; Ga. L. 2006, p. 416, § 2/HB 1066.)

Law reviews. — For article recommending more consistency in age requirements of laws pertaining to the welfare of minors, see 6 Ga. St. B.J. 189 (1969).

JUDICIAL DECISIONS

No private right of action for violation of notice requirement. — Trial court properly granted the motion to dismiss or the motion for summary judgment filed by various defendants in a suit brought by plaintiff child, by and through the child's parent, which asserted negligence and negligence per se for failing to inform the plaintiff and the parent, at the time of the plaintiff's birth, that the plaintiff had sickle cell disease. The trial court properly ruled that no private right of

action exists for violation of O.C.G.A. § 31-12-7, and the appellate court clarified that there existed no statutory intent to impose strict liability for violating the notice requirement of § 31-12-7 and substantial compliance with the statute was all that was required, which was shown in that the defendants attempted to contact the plaintiff and the parent but were unable to locate them due to incorrect contact information. In re Carter, 288 Ga. App. 276, 653 S.E.2d 860 (2007).

OPINIONS OF THE ATTORNEY GENERAL

Department of Human Resources may require examination of all newborn infants for sickle cell anemia and the sickle cell trait under O.C.G.A. § 31-2-7. However, if clearly defined and

articulable guidelines are provided, the department may restrict such testing under that statute to "susceptible" persons. 1981 Op. Att'y Gen. No. 81-40.

31-12-8. Occupational health and safety.

For the purpose of safeguarding the health of employees and the general public, the department and the county boards of health are empowered to conduct studies and research pertaining to the operation and maintenance of industrial, commercial, business, or other facilities where people congregate or work. The department may issue such orders and directives in any particular instance as shall be necessary to abate or minimize any practice or any operation or condition that constitutes or may be reasonably deemed to constitute a hazard to the health and safety of the employees or the general public. Administrative hearings and reviews and enforcement of such orders and directives shall be governed by Article 1 of Chapter 5 of this title. (Code 1933, § 88-1206, enacted by Ga. L. 1964, p. 499, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 32 Am. Jur. 2d, Federal Employers' Liability and Compensation Acts, § 19 et seq. 39 Am. Jur. 2d, Health, §§ 57, 75, 82. 48 Am. Jur. 2d, Labor and Labor Relations, § 380. 48B Am. Jur. 2d, Labor and Labor Relations, §§ 2675, 2684.

C.J.S. — 16 C.J.S., Constitutional Law, § 241 et seq. 16B C.J.S., Constitutional Law, §§ 837, 1084. 39A C.J.S., Health and Environment, § 65 et seq. 99 C.J.S., Workmen's Compensation, §§ 5, 315 et seq.

31-12-9. Importation, sale, and breeding of animals and birds to be kept as pets.

In addition to its other powers in the control of preventable diseases, the department may by rule, regulation, and order provide for the licensing, registration, supervision, and investigation of all firms or persons importing, purchasing, breeding, or selling any birds or animals as pets, or any birds or animals which are customarily kept as pets, and may require all such firms or persons to comply with reporting and record-keeping requirements and marking, banding, or other identification requirements. The department is further empowered to prescribe rules and regulations governing the shipment, transportation, or carriage of such birds or animals and require such other control measures deemed necessary to prevent infectious matter present in birds, arthropods, and animals from being conveyed to persons unless the responsibility of such control is by law delegated to some other agency. (Code 1933, § 88-1205, enacted by Ga. L. 1964, p. 499, § 1.)

Cross references. — Authority of Department of Agriculture to quarantine, seize, and destroy birds carrying exotic or untreatable disease, § 4-10-7.

Administrative rules and regula-

tions. — Importation, purpose, breeding, giving away, sale or offer of sale of birds of the psittacine family, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Human Re-

sources (now the Department of Community Health for these purposes), Chapter 290-5-1.

RESEARCH REFERENCES

Am. Jur. 2d. — 4 Am. Jur. 2d, Animals, §§ 17, 21, 23, 25, 43, 44, 59 et seq. 21A Am. Jur. 2d, Customs Duties and Import Regulations, §§ 24, 37. 67 Am. Jur. 2d, Sales, §§ 255, 256, 638.

C.J.S. — 3B C.J.S., Animals, § 67 et seq. 39A C.J.S., Health and Environment, § 70.

31-12-10. Right of entry to facility.

In carrying out the provisions of this chapter, it shall be the duty of the person in charge of any industrial, commercial, business, or other facility where people work, live, or congregate, upon reasonable notice and at reasonable times, to grant entry to duly authorized agents of the department and of any county board of health. (Code 1933, § 88-1207, enacted by Ga. L. 1964, p. 499, § 1.)

31-12-11. Abating operation of bathhouses.

(a) As used in this Code section, the term:

(1) "Bathhouse" means a place of public accommodation having facilities including all or some of the following: baths, whirlpools, saunas, massage areas or rooms, and semiprivate or private areas or rooms; and where entry to such place of public accommodation is contingent upon the payment of money on an hourly, daily, weekly, monthly, annual, or club basis; and where the owners or managers or employees of such place of public accommodation knowingly grant or permit the use of such place for illegal sexual activity.

(2) "Illegal sexual activity" means any illegal sexual act involving the sex organs of a person and the mouth, anus, or sex organs of another person.

(b) The operation of bathhouses in this state is declared to be harmful to the public health, safety, and welfare of the citizens of this state.

(c) The department and the county boards of health are empowered to maintain actions for injunction pursuant to Code Section 31-5-9 to abate the operation of any bathhouse in this state as a public nuisance.

(d) The commissioner or the commissioner's designee or the director of any county board of health is authorized to obtain, pursuant to Article 2 of Chapter 5 of this title, inspection warrants for the search or inspection of any property which is a bathhouse.

(e) Any person, firm, corporation, or other business entity which owns, operates, or is a manager for or employee of a bathhouse shall be guilty of a misdemeanor.

(f) Nothing in this Code section shall be construed so as to repeal Code Section 16-6-10, relating to keeping a place of prostitution. (Code 1981, § 31-12-11, enacted by Ga. L. 1986, p. 1208, § 1.)

OPINIONS OF THE ATTORNEY GENERAL

Fingerprintable offense. — Operation of a "bath house" is an offense for which persons charged are to be fingerprinted. 1986 Op. Att'y Gen. 86-30.

31-12-12. Restrictions on sale or dispensing of contact lenses; responsibilities relating to prescriptions; criminal violation; enforcement.

(a)(1) No person in this state shall sell, dispense, or serve as a conduit for the sale or dispensing of contact lenses to the ultimate user of such contact lenses except persons licensed and regulated by Chapter 29, 30, or 34 of Title 43.

(2) Any person who violates paragraph (1) of this subsection shall upon conviction be guilty of a felony and punished by imprisonment for one to five years or by a fine not to exceed \$10,000.00 or by both such fine and imprisonment.

(b) All contact lenses used in the determination of a contact lens prescription are considered to be diagnostic lenses. After the diagnostic period and the contact lenses have been adequately fitted and the patient released from immediate follow-up care by persons licensed and regulated by Chapter 29, 30, or 34 of Title 43, the prescribing optometrist or ophthalmologist shall, upon the request of the patient, at no cost, provide a prescription in writing for replacement contact lenses. A person shall not dispense or adapt contact lenses without first receiving authorization to do so by a written prescription, except when authorized orally to do so by a person licensed and regulated by Chapter 30 or 34 of Title 43.

(c) Patients who comply with such fitting and follow-up requirements as may be established by the prescribing optometrist or ophthalmologist may obtain replacement contact lenses until the expiration date listed on the prescription from a person who may lawfully dispense contact lenses under subsection (a) of this Code section.

(d) A prescriber may refuse to give the patient a copy of the patient's prescription until the patient has paid for all services rendered in connection with the prescription.

(e) No replacement contact lenses may be sold or dispensed except pursuant to a prescription which:

(1) Conforms to state and federal regulations governing such forms and includes the name, address, and state licensure number of a prescribing practitioner;

(2) Explicitly states an expiration date of not more than 12 months from the date of the last prescribing contact lens examination, unless a medical or refractive problem affecting vision requires an earlier expiration date;

(3) Explicitly states the number of refills;

(4) Explicitly states that it is for contact lenses and indicates the lens brand name and type, including all specifications necessary for the ordering or fabrication of lenses; and

(5) Is kept on file by the person selling or dispensing the replacement contact lenses for at least 24 months after the prescription is filled.

(f) Anyone who fills a prescription bears the full responsibility of the accuracy of the contact lenses provided under the prescription. At no time, without the direction of a prescriber, shall any changes or substitutions be made in the brand or type of lenses the prescription calls for with the exceptions of tint change if requested by the patient. However, if a prescription specifies “only” a specific color or tinted lens, those instructions shall be observed.

(g) All sales of and prescriptions for contact lenses in this state shall conform to the federal Fairness to Contact Lens Consumers Act, P.L. 108-164, 15 U.S.C.A. Section 7601, et seq. The provisions of this Code section shall be construed in aid of and in conformity with said federal act.

(h) Civil proceedings to enforce the provisions of this Code section may be brought by any board created under Chapter 29, 30, or 34 of Title 43 or by any other interested person through injunction or other appropriate remedy. (Code 1981, § 31-12-12, enacted by Ga. L. 1991, p. 1003, § 1; Ga. L. 1992, p. 1475, § 1; Ga. L. 1995, p. 328, § 1; Ga. L. 2004, p. 903, § 1.)

31-12-13. Definitions concerning bloodborne pathogens; standards; funds for research and development.

(a) For purposes of this Code section, the term:

(1) “Bloodborne pathogens” means pathogenic microorganisms that are present in human blood and can cause disease in humans. These pathogens include, but are not limited to, hepatitis B virus (HBV), hepatitis C virus (HCV), and human immunodeficiency virus (HIV).

(2) “Engineered sharps injury protection” means either:

(A) A physical attribute built into or used with a needle device used for withdrawing body fluids, accessing a vein or artery, or administering medications or other fluids, which effectively reduces the risk of an exposure incident by a mechanism such as barrier creation, blunting, encapsulation, withdrawal, retraction, destruction, or other effective mechanisms; or

(B) A physical attribute built into or used with any other type of needle device or into a nonneedle sharp, which effectively reduces the risk of an exposure incident.

(3) “Exposure incident” means any sharps injury which may reasonably have exposed the person so injured to another person’s blood or other material potentially containing bloodborne pathogens.

(4) “Front-line health care workers” means workers from a variety of occupational classifications and departments, including, but not limited to, registered professional nurses, nurse aids, medical technicians, phlebotomists, and physicians.

(5) “Needleless system” means a device that does not utilize needles for:

(A) The withdrawal of body fluids after initial venous or arterial access is established;

(B) The administration of medication or fluids; or

(C) Any other procedure involving the potential for an exposure incident.

(6) “Public employee” means an employee of a county board of health established in accordance with Chapter 3 of this title or an employee of the state or an agency or authority of the state employed in a public health care facility or other facility providing health care related services, currently not subject to the jurisdiction of the federal Occupational Safety and Health Administration.

(7) “Public employer” means each employer having any public employee with occupational exposure to blood or other material potentially containing bloodborne pathogens.

(8) “Sharp” means any object used or encountered in a health care setting that can be reasonably anticipated to penetrate the skin or any other part of the body and to result in an exposure incident, including, but not limited to, needle devices, scalpels, lancets, broken glass, and broken capillary tubes, but does not include prefilled syringes or other drugs or biologics prepackaged with an administration system requiring federal Food and Drug Administration approval for changes to packaging, labeling, or product.

(9) "Sharps injury" means any injury caused by a sharp, including, but not limited to, cuts, abrasions, or needlesticks.

(10) "Sharps injury log" means a written or electronic record satisfying the requirements of paragraph (2) of subsection (c) of this Code section.

(b) The department shall, no later than January 1, 2001, adopt a bloodborne pathogen standard governing occupational exposure of public employees to blood and other potentially infectious materials. The standard shall be at least as prescriptive as the standard promulgated by the federal Occupational Safety and Health Administration and shall include, but not be limited to, the following:

(1) A requirement that the most effective available needleless systems and sharps with engineered sharps injury protection be included as engineering and work practice controls in all facilities employing public employees except in cases where:

(A) None are available in the marketplace; or

(B) An evaluation committee, established by the employer, at least half the members of which are front-line health care workers, determines by means of objective product evaluation criteria that use of such devices will jeopardize patient or employee safety with regard to a specific medical procedure;

(2) A requirement that each public employer develop and implement an effective written exposure control plan that includes, but is not limited to, procedures for:

(A) Identifying and selecting needleless systems and sharps with engineered sharps injury protection through the evaluation committee described in subparagraph (B) of paragraph (1) of this subsection; and

(B) Updating the written exposure control plan when necessary to reflect progress in implementing needleless systems and sharps with engineered sharps injury protection as determined by the evaluation committee described in subparagraph (B) of paragraph (1) of this subsection, but in no event less than once every year;

(3) A requirement that information concerning exposure incidents be recorded in a sharps injury log, including, but not limited to:

(A) Date and time of the exposure incident;

(B) Type and brand of sharp involved in the exposure incident; and

(C) Description of the exposure incident which shall include:

- (i) Job classification of the exposed employee;
 - (ii) Department or work area where the exposure incident occurred;
 - (iii) The procedure that the exposed employee was performing at the time of the incident;
 - (iv) How the incident occurred;
 - (v) The body part involved in the exposure incident;
 - (vi) If the sharp had engineered sharps injury protection, whether the protective mechanism was activated, and whether the injury occurred before the protective mechanism was activated, during activation of the mechanism, or after activation of the mechanism, if applicable;
 - (vii) If the sharp had no engineered sharps injury protection, the injured employee's opinion as to whether and how such a mechanism could have prevented the injury, as well as the basis for the opinion; and
 - (viii) The employee's opinion about whether any other engineering, administrative, or work practice control could have prevented the injury, as well as the basis for the opinion;
- (4) Ensuring that all front-line health care workers are trained on the use of all engineering controls before they are introduced into the clinical setting; and
- (5) Establishing an evaluation committee, at least half the members of which are front-line health care workers, to advise the employer on the implementation of the requirements of this Code section. Members of the committee shall be trained in the proper method of utilizing product evaluation criteria prior to the commencement of any product evaluation.
- (c) The department shall consider additional enactments as part of the bloodborne pathogen standard to prevent sharps injuries or bloodborne pathogen exposure incidents including, but not limited to, training and educational requirements, measures to increase vaccinations, strategic placement of sharps containers as close to the work area as practical, and increased use of personal protective equipment.
- (d) The department shall compile and maintain a list of existing needleless systems and sharps with engineered sharps injury protection, which shall be available to assist public employers in complying with the requirements of the bloodborne pathogen standard adopted pursuant to this Code section. The list may be developed from existing sources of information, including, but not limited to, the federal Food

and Drug Administration, the federal Centers for Disease Control and Prevention, the National Institute of Occupational Safety and Health, and the United States Department of Veterans Affairs.

(e) A fund is established within the department into which moneys may be appropriated to provide for research and development, as well as product evaluations, of needleless systems and sharps with engineered sharps injury protection. (Code 1981, § 31-12-13, enacted by Ga. L. 2000, p. 544, § 1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2000, Code Section 31-12-13, as enacted by Ga. L. 2000, p. 927, § 1, was redesignated as Code Section 31-12-14.

Pursuant to Code Section 28-9-5, in 2000, in subsection (a), a comma was added following “(HCV)” in paragraph (a)(1), “this title” was substituted for “Title 31” in paragraph (a)(6), and a comma was added following “labeling” near the end of paragraph (a)(8); in subsection (b), a comma was added preceding “or” in divi-

sion (b)(3)(C)(vi) and a comma was deleted following “criteria” in the second sentence of paragraph (b)(5); and, in the second sentence of subsection (d), a comma was added following “including” and “and Prevention” was inserted.

Administrative rules and regulations. — Sharps injury prevention, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Human Resources (now the Department of Community Health for these purposes), Public Health, Chapter 290-5-60.

31-12-14. Cancer research program fund; contributions; accounting.

(a) The General Assembly finds that it is in the best interest of the state to provide for cancer research programs. In addition to and as a supplement to traditional financing mechanisms for such programs, it is the policy of this state to enable and encourage citizens voluntarily to support such programs.

(b) To support programs for cancer research, the department may, without limitation, promote and solicit voluntary contributions through the individual income tax return contribution mechanism established in subsection (e) of this Code section or through any fund raising or other promotional techniques deemed appropriate by the department.

(c) There is established a special fund to be known as the “Cancer Research Program Fund.” This fund shall consist of all moneys contributed under subsection (b) of this Code section, all moneys transferred to the department under subsection (e) of this Code section, and any other moneys contributed to this fund. All balances in the fund shall be deposited in an interest-bearing account identifying the fund and shall be carried forward each year so that no part thereof may be deposited in the general treasury. The fund shall be administered and the moneys held in the fund shall be expended by the department through contracts for cancer research conducted in Georgia.

(d) Contributions to the fund shall be deemed supplemental to and shall in no way supplant funding that would otherwise be appropriated for these purposes. Contributions shall only be used for research and for administrative costs authorized in paragraph (2) of subsection (e) of this Code section and shall not be used for personnel or administrative positions. The department shall prepare, by February 1 of each year, an accounting of the moneys received and expended from the fund and a review and evaluation of all expended moneys of the fund. The report shall be made available to the Governor, the Lieutenant Governor, the Speaker of the House of Representatives, the members of the Board of Public Health, and, upon request, to members of the public.

(e)(1) Unless an earlier date is deemed feasible and is established by the Governor, each Georgia individual income tax return form for taxable years beginning on or after January 1, 2000, shall contain appropriate language, to be determined by the state revenue commissioner, offering the taxpayer the opportunity to contribute to the Cancer Research Program Fund established in subsection (c) of this Code section by either donating all or any part of any tax refund due, by authorizing a reduction in the refund check otherwise payable, or by contributing any amount over and above any amount of tax owed by adding that amount to the taxpayer's payment. The instructions accompanying the individual income tax return form shall contain a description of the purposes for which this fund was established and the intended use of moneys received from the contributions. Each taxpayer required to file a state individual income tax return who desires to contribute to such fund may designate such contribution as provided in this Code section on the appropriate individual income tax return form.

(2) The Department of Revenue shall determine annually the total amount so contributed, shall withhold therefrom a reasonable amount for administering this voluntary contribution program, and shall transmit the balance to the department for deposit in the fund established in subsection (c) of this Code section; provided, however, that the amount retained for administrative costs, including implementation costs, shall not exceed \$50,000.00 per year. If, in any tax year, the administrative costs of the Department of Revenue for collecting contributions pursuant to this Code section exceed the sum of such contributions, the administrative costs which the Department of Revenue is authorized to withhold from such contributions shall not exceed the sum of such contributions. (Code 1981, § 31-12-14, enacted by Ga. L. 2000, p. 927, § 1; Ga. L. 2009, p. 453, § 1-5/HB 228; Ga. L. 2009, p. 686, § 1/SB 201; Ga. L. 2011, p. 705, § 6-4/HB 214.)

The 2011 amendment, effective July 1, 2011, substituted "Board of Public Health" for "Board of Community Health" in the last sentence of subsection (d).

Cross references. — Use of marijuana for treatment of cancer and glaucoma, T. 43, C. 34, A. 5.

Administrative rules and regulations. — Cancer state aid program, Official Compilation of the Rules and Regulations of the State of Georgia, Department

of Human Resources (now the Department of Community Health for these purposes), Public Health, Chapter 290-5-10.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

CHAPTER 12A

SMOKEFREE AIR

Sec.		Sec.	
31-12A-1.	Short title.	31-12A-8.	"No Smoking" signs; ashtrays prohibited in nonsmoking areas.
31-12A-2.	Definitions.	31-12A-9.	Public education program.
31-12A-3.	Smoking prohibited in state and local government buildings.	31-12A-10.	Enforcement by the Department of Public Health and county boards of health.
31-12A-4.	Smoking prohibited in enclosed public places.	31-12A-11.	Local operating procedures.
31-12A-5.	Smoking prohibited in enclosed areas within places of employment; required communications.	31-12A-12.	Other laws, rules, regulations, and ordinances not prohibited.
31-12A-6.	Exemptions.	31-12A-13.	Construction.
31-12A-7.	Smoking prohibited in designated nonsmoking places.		

Cross references. — Smoking in public places, § 16-12-2.

Administrative rules and regulations. — Georgia Smokefree Air Act of 2005, Official Compilation of the Rules

and Regulations of the State of Georgia, Department of Human Resources (now the Department of Community Health for these purposes), Public Health, Chapter 290-5-61.

31-12A-1. Short title.

This chapter shall be known and may be cited as the "Georgia Smokefree Air Act of 2005." (Code 1981, § 31-12A-1, enacted by Ga. L. 2005, p. 1184, § 2/SB 90.)

31-12A-2. Definitions.

As used in this chapter, the term:

(1) "Bar" means an establishment that is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of those beverages, including, but not limited to, taverns, nightclubs, cocktail lounges, and cabarets.

(2) "Business" means any corporation, sole proprietorship, partnership, limited partnership, limited liability corporation, limited liability partnership, professional corporation, enterprise, franchise, association, trust, joint venture, or other entity, whether for profit or nonprofit.

(3) "Employee" means an individual who is employed by a business in consideration for direct or indirect monetary wages or profit.

(4) "Employer" means an individual or a business that employs one or more individuals.

(5) "Enclosed area" means all space between a floor and ceiling that is enclosed on all sides by solid walls or windows, exclusive of doorways, which extend from the floor to the ceiling.

(6) "Health care facility" means an office or institution providing care or treatment of diseases, whether physical, mental, or emotional, or other medical, physiological, or psychological conditions, including, but not limited to, hospitals, rehabilitation hospitals or other clinics, including weight control clinics, homes for the chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, dentists, and all specialists within these professions. This definition shall include all waiting rooms, hallways, private rooms, semiprivate rooms, and wards within health care facilities. This definition shall not include long-term care facilities as defined in paragraph (3) of Code Section 31-8-81.

(7) "Infiltrate" means to permeate an enclosed area by passing through its walls, ceilings, floors, windows, or ventilation systems to the extent that an individual can smell secondhand smoke.

(8) "Local governing authority" means a county or municipal corporation of the state.

(9) "Place of employment" means an enclosed area under the control of a public or private employer that employees utilize during the course of employment, including, but not limited to, work areas, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, and hallways. A private residence is not a place of employment unless it is used as a licensed child care, adult day-care, or health care facility. This term shall not include vehicles used in the course of employment.

(10) "Public place" means an enclosed area to which the public is invited or in which the public is permitted, including, but not limited to, banks, bars, educational facilities, health care facilities, laundromats, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, shopping malls, sports arenas, theaters, and waiting rooms. A private residence is not a public place unless it is used as a licensed child care, adult day-care, or health care facility.

(11) "Restaurant" means an eating establishment, including, but not limited to, coffee shops, cafeterias, sandwich stands, and private and public school cafeterias, which gives or offers for sale food to the public, guests, or employees, as well as kitchens and catering

facilities in which food is prepared on the premises for serving elsewhere. The term shall include a bar area within any restaurant.

(12) "Retail tobacco store" means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.

(13) "Secondhand smoke" means smoke emitted from lighted, smoldering, or burning tobacco when the person smoking is not inhaling, smoke emitted at the mouthpiece during puff drawing, and smoke exhaled by the person smoking.

(14) "Service line" means an indoor line in which one or more persons are waiting for or receiving service of any kind, whether or not the service involves the exchange of money.

(15) "Shopping mall" means an enclosed public walkway or hall area that serves to connect retail or professional establishments.

(16) "Smoking" means inhaling, exhaling, burning, or carrying any lighted tobacco product including cigarettes, cigars, and pipe tobacco.

(17) "Smoking area" means a separately designated enclosed room which need not be entered by an employee in order to conduct business that is designated as a smoking area and, when so designated as a smoking area, shall not be construed as to deprive employees of a nonsmoking lounge, waiting area, or break room.

(18) "Sports arena" means enclosed stadiums and enclosed sports pavilions, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys, and other similar places where members of the general public assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events. (Code 1981, § 31-12A-2, enacted by Ga. L. 2005, p. 1184, § 2/SB 90.)

31-12A-3. Smoking prohibited in state and local government buildings.

Smoking shall be prohibited in all enclosed facilities of, including buildings owned, leased, or operated by, the State of Georgia, its agencies and authorities, and any political subdivision of the state, municipal corporation, or local board or authority created by general, local, or special Act of the General Assembly or by ordinance or resolution of the governing body of a county or municipal corporation individually or jointly with other political subdivisions or municipalities of the state. (Code 1981, § 31-12A-3, enacted by Ga. L. 2005, p. 1184, § 2/SB 90.)

31-12A-4. Smoking prohibited in enclosed public places.

Except as otherwise specifically authorized in Code Section 31-12A-6, smoking shall be prohibited in all enclosed public places in this state. (Code 1981, § 31-12A-4, enacted by Ga. L. 2005, p. 1184, § 2/SB 90.)

31-12A-5. Smoking prohibited in enclosed areas within places of employment; required communications.

(a) Except as otherwise specifically provided in Code Section 31-12A-6, smoking shall be prohibited in all enclosed areas within places of employment, including, but not limited to, common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, and all other enclosed facilities.

(b) Such prohibition on smoking shall be communicated to all current employees by July 1, 2005, and to each prospective employee upon their application for employment. (Code 1981, § 31-12A-5, enacted by Ga. L. 2005, p. 1184, § 2/SB 90.)

31-12A-6. Exemptions.

(a) Notwithstanding any other provision of this chapter, the following areas shall be exempt from the provisions of Code Sections 31-12A-4 and 31-12A-5:

(1) Private residences, except when used as a licensed child care, adult day-care, or health care facility;

(2) Hotel and motel rooms that are rented to guests and are designated as smoking rooms; provided, however, that not more than 20 percent of rooms rented to guests in a hotel or motel may be so designated;

(3) Retail tobacco stores, provided that secondhand smoke from such stores does not infiltrate into areas where smoking is prohibited under the provisions of this chapter;

(4) Long-term care facilities as defined in paragraph (3) of Code Section 31-8-81;

(5) Outdoor areas of places of employment;

(6) Smoking areas in international airports, as designated by the airport operator;

(7) All workplaces of any manufacturer, importer, or wholesaler of tobacco products, of any tobacco leaf dealer or processor, all tobacco

storage facilities, and any other entity set forth in Code Section 10-13A-2;

(8) Private and semiprivate rooms in health care facilities licensed under this title that are occupied by one or more persons, all of whom have written authorization by their treating physician to smoke;

(9) Bars and restaurants, as follows:

(A) All bars and restaurants to which access is denied to any person under the age of 18 and that do not employ any individual under the age of 18; or

(B) Private rooms in restaurants and bars if such rooms are enclosed and have an air handling system independent from the main air handling system that serves all other areas of the building and all air within the private room is exhausted directly to the outside by an exhaust fan of sufficient size;

(10) Convention facility meeting rooms and public and private assembly rooms contained within a convention facility not wholly or partially owned, leased, or operated by the State of Georgia, its agencies and authorities, or any political subdivision of the state, municipal corporation, or local board or authority created by general, local, or special Act of the General Assembly while these places are being used for private functions and where individuals under the age of 18 are prohibited from attending or working as an employee during the function;

(11) Smoking areas designated by an employer which shall meet the following requirements:

(A) The smoking area shall be located in a nonwork area where no employee, as part of his or her work responsibilities, shall be required to enter, except such work responsibilities shall not include custodial or maintenance work carried out in the smoking area when it is unoccupied;

(B) Air handling systems from the smoking area shall be independent from the main air handling system that serves all other areas of the building and all air within the smoking area shall be exhausted directly to the outside by an exhaust fan of sufficient size and capacity for the smoking area and no air from the smoking area shall be recirculated through or infiltrate other parts of the building; and

(C) The smoking area shall be for the use of employees only.

The exemption provided for in this paragraph shall not apply to restaurants and bars;

(12) Common work areas, conference and meeting rooms, and private offices in private places of employment, other than medical facilities, that are open to the general public by appointment only; except that smoking shall be prohibited in any public reception area of such place of employment; and

(13) Private clubs, military officer clubs, and noncommissioned officer clubs.

(b) In order to qualify for exempt status under subsection (a) of this Code section, any area described in subsection (a) of this Code section, except for areas described in paragraph (1) of subsection (a) of this Code section, shall post conspicuously at every entrance a sign indicating that smoking is permitted. (Code 1981, § 31-12A-6, enacted by Ga. L. 2005, p. 1184, § 2/SB 90; Ga. L. 2006, p. 72, § 31/SB 465.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2005, “chapter” was substituted for “article” at the end of paragraph (a)(3); “and” was deleted at the end of paragraph (a)(11); “; and” was sub-

stituted for a period at the end of paragraph (a)(12); and a comma was inserted following “military officer clubs” in paragraph (a)(13).

31-12A-7. Smoking prohibited in designated nonsmoking places.

Notwithstanding any other provision of this chapter, an owner, operator, manager, or other person in control of an establishment, facility, or outdoor area may declare that entire establishment, facility, or outdoor area as a nonsmoking place. Smoking shall be prohibited in any place in which a sign conforming to the requirements of subsection (a) of Code Section 31-12A-8 is posted. (Code 1981, § 31-12A-7, enacted by Ga. L. 2005, p. 1184, § 2/SB 90.)

31-12A-8. “No Smoking” signs; ashtrays prohibited in nonsmoking areas.

(a) “No Smoking” signs or the international “No Smoking” symbol consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it may be clearly and conspicuously posted by the owner, operator, manager, or other person in control in every public place and place of employment where smoking is prohibited by this chapter.

(b) All ashtrays shall be removed from any area where smoking is prohibited by this chapter by the owner, operator, manager, or other person in control of the area, unless such ashtray is permanently affixed to an existing structure. (Code 1981, § 31-12A-8, enacted by Ga. L. 2005, p. 1184, § 2/SB 90.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2005, “chapter” was substituted for “article” at the end of subsection (a).

31-12A-9. Public education program.

The Department of Public Health and the agency designated by each local governing authority in this state may engage in a continuing program to explain and clarify the purposes and requirements of this chapter to citizens affected by it and to guide owners, operators, and managers in their compliance with it. The program may include print or electronic publication of a brochure for affected businesses and individuals explaining the provisions of this chapter. (Code 1981, § 31-12A-9, enacted by Ga. L. 2005, p. 1184, § 2/SB 90; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2010, p. 838, § 11/SB 388; Ga. L. 2011, p. 705, § 6-3/HB 214.)

The 2010 amendment, effective June 3, 2010, inserted “print or electronic” in the last sentence.

The 2011 amendment, effective July 1, 2011, substituted “Department of Public Health” for “Department of Community Health” in the first sentence of this Code section.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

31-12A-10. Enforcement by the Department of Public Health and county boards of health.

The Department of Public Health and the county boards of health and their duly authorized agents are authorized and empowered to enforce compliance with this chapter and the rules and regulations adopted and promulgated under this chapter and, in connection therewith, to enter upon and inspect the premises of any establishment or business at any reasonable time and in a reasonable manner, as provided in Article 2 of Chapter 5 of this title. (Code 1981, § 31-12A-10, enacted by Ga. L. 2005, p. 1184, § 2/SB 90; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214.)

The 2011 amendment, effective July 1, 2011, substituted “Department of Public Health” for “Department of Community Health” in this Code section.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

31-12A-11. Local operating procedures.

The county boards of health may annually request other governmental and educational agencies having facilities within the area of the local government to establish local operating procedures in cooperation and compliance with this chapter. (Code 1981, § 31-12A-11, enacted by Ga. L. 2005, p. 1184, § 2/SB 90.)

31-12A-12. Other laws, rules, regulations, and ordinances not prohibited.

This chapter shall be cumulative to and shall not prohibit the enactment of any other general or local laws, rules, and regulations of state or local governing authorities or local ordinances prohibiting smoking which are more restrictive than this chapter or are not in direct conflict with this chapter. (Code 1981, § 31-12A-12, enacted by Ga. L. 2005, p. 1184, § 2/SB 90.)

31-12A-13. Construction.

(a) This chapter shall not be construed to permit smoking where it is otherwise restricted by other applicable laws.

(b) Nothing in this chapter shall be construed as to repeal the provisions of Code Section 16-12-2.

(c) This chapter shall be liberally construed so as to further its purposes. (Code 1981, § 31-12A-13, enacted by Ga. L. 2005, p. 1184, § 2/SB 90.)

CHAPTER 13

RADIATION CONTROL

Sec.		Sec.	
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31-13-2.	Declaration of policy.	31-13-12.	License required.
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31-13-10.	Suspension, revocation, and amendment of license or registration; emergency orders; review.	31-13-24.	Effect on proceedings commenced before April 4, 1990; continuation of federal aid to agency receiving transfer of functions.
31-13-11.	Impounding and condemnation	31-13-25.	Rules, regulations, agreements, and contracts formerly under Department of Human Resources (now known as the Department of Community Health for these purposes).

Administrative rules and regulations. — X-Ray, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Human Resources, Public Health, Chapter 290-5-22.

Laser radiation, Official Compilation of

the Rules and Regulations of the State of Georgia, Department of Human Resources (now the Department of Community Health for these purposes), Public Health, Chapter 290-5-27.

Radioactive materials, Official Compila-

tion of the Rules and Regulations of the State of Georgia, Georgia Department of Natural Resources, Environmental Protection, Chapter 391-3-17.

Law reviews. — For note on 1990 amendment of Code sections within this chapter, see 7 Ga. St. U.L. Rev. 304 (1990).

RESEARCH REFERENCES

Am. Jur. Proof of Facts. — Radiation Injuries — Ionizing Radiation, 14 POF3d 85.

ALR. — Applicability of doctrine of strict liability in tort to injury resulting from X-ray radiation, 16 ALR4th 1300.

31-13-1. Short title.

This chapter shall be known and may be cited as the “Georgia Radiation Control Act.” (Code 1933, § 88-1301, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1990, p. 711, § 1.)

31-13-2. Declaration of policy.

It is the policy of this state, in furtherance of its responsibility to protect the environment and the public health and safety of its citizens and, to the extent authorized under Article VI, Section 2 of the Constitution of the United States:

(1) To institute and maintain programs to allow development and utilization of sources of radiation for purposes that are consistent with the protection of the environment and the health and safety of the public; and

(2) To prevent any associated harmful effects of radiation upon the environment or the health and safety of the public through the institution and maintenance of regulatory programs for radiation sources, providing for:

(A) Compatibility with the standards and regulatory programs of the federal government for by-product, source, and special nuclear materials;

(B) An effective system of regulations within the state consistent with this chapter and with any environmental laws, rules, regulations, standards, or limitations; and

(C) A system consonant insofar as possible with those of other states. (Code 1933, § 88-1302, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1973, p. 920, § 1; Ga. L. 1976, p. 1567, § 1; Ga. L. 1990, p. 711, § 1.)

31-13-3. Definitions.

As used in this chapter, the term:

(1) "Accelerator produced radioactive material" means any material made radioactive by a particle accelerator.

(1.1) "By-product material" means any radioactive material, except special nuclear material, yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material.

(1.2) "Department" means the Department of Community Health.

(2) "Director" means the director of the Environmental Protection Division of the Department of Natural Resources.

(3) "General license" means a license effective pursuant to applicable rules and regulations promulgated by the Department of Community Health or the Department of Natural Resources, without the filing of an application, to transfer, acquire, own, possess, or use quantities of by-product, source, or special nuclear materials, or other radioactive material occurring naturally or produced artificially or devices, radiation generating equipment, or equipment utilizing such materials.

(4) "Ionizing radiation" means gamma rays and X-rays, alpha and beta particles, high-speed electrons, protons, neutrons, and other nuclear particles; but not sound or radio waves or visible, infrared, or ultraviolet light.

(4.1) "Naturally occurring radioactive material" means radioactive material occurring naturally in the environment.

(4.2) "Nonionizing radiation" means:

(A) Any electromagnetic radiation other than ionizing electromagnetic radiation; or

(B) Any sonic, ultrasonic, or infrasonic wave.

(5) "Permissible radiation exposure" means the maximum amount of radiation to which an individual may be exposed, as established in applicable standards adopted by the Department of Community Health or the Department of Natural Resources.

(6) "Person" means any individual, corporation, partnership, association, trust, estate, public or private institution, agency or political subdivision of this state, or any other state or political subdivision or agency thereof.

(7) "Radiation" means gamma rays and X-rays, alpha and beta particles, high-speed electrons, protons, neutrons, and other nuclear particles, and electromagnetic radiation consisting of associated and interacting electric and magnetic waves with frequencies between

1×10^9 hertz and 1×10^{24} hertz and wavelengths between 3×10^{-1} meters and 3×10^{-16} meters.

(8) "Radiation generating equipment" means any manufactured product or device, or component part of such a product or device, or any machine or system which during operation can generate or emit radiation, except those which emit radiation only from radioactive material.

(9) "Radioactive material" means any solid, liquid, or gas for any use that emits ionizing radiation spontaneously. It includes accelerator produced, by-product, naturally occurring, source, and special nuclear material.

(9.1) "Registration" means registration with either the Department of Community Health or the Department of Natural Resources in accordance with applicable rules and regulations adopted pursuant to this chapter.

(10) "Source material" means (A) uranium, thorium, and any other material which the Department of Natural Resources declares to be source material after the Nuclear Regulatory Commission, or any successor thereto, has determined the material to be such; or (B) ores containing one or more of the foregoing materials, in such concentration as the Department of Natural Resources declares to be source material after the Nuclear Regulatory Commission, or any successor thereto, has determined the material in such concentration to be source material.

(11) "Special nuclear material" means (A) plutonium, uranium 233, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the Department of Natural Resources declares to be special nuclear material after the Nuclear Regulatory Commission, or any successor thereto, has determined the material to be such, but does not include source material; or (B) any material artificially enriched by any of the foregoing, but does not include source material.

(12) "Specific license" means a license, issued after application, to use, manufacture, produce, transfer, receive, acquire, own, or possess quantities of by-product, source, or special nuclear materials, or other radioactive material occurring naturally or produced artificially, or devices or equipment utilizing such materials. (Code 1933, § 88-1303, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1973, p. 920, §§ 2, 3; Ga. L. 1976, p. 1567, § 2; Ga. L. 1988, p. 1670, § 1; Ga. L. 1990, p. 711, § 1; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 4-15/HB 214.)

The 2011 amendment, effective July 1, 2011, added paragraph (1.2).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1990, a comma was inserted following “Natural Resources” in paragraph (3).

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

31-13-4. Administration of state-wide radiation control program for radiation generating equipment.

The Department of Community Health is designated the state agency to administer a state-wide radiation control program for radiation generating equipment consistent with this chapter and any environmental laws, rules, regulations, standards, or limitations administered by the Department of Natural Resources. It is declared to be the intent of the General Assembly that no provision of this chapter shall be construed so as to repeal, supersede, or preempt any of the functions, powers, authority, duties, or responsibilities assigned to the Environmental Protection Division of the Department of Natural Resources under this chapter or any other laws or statutes of this state. (Code 1933, § 88-1304, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1976, p. 1567, § 3; Ga. L. 1990, p. 711, § 1; Ga. L. 2009, p. 453, § 1-4/HB 228.)

Cross references. — Powers and duties of director as to hazardous waste, § 12-8-65.

31-13-4.1. Administration of state-wide radiation control program for radioactive materials.

The Department of Natural Resources is designated the state agency to administer a state-wide radiation control program for radioactive materials consistent with this chapter. (Code 1981, § 31-13-4.1, enacted by Ga. L. 1990, p. 711, § 1.)

31-13-5. Powers and duties of Department of Community Health and Department of Natural Resources; enforcement of chapter through inspection; training programs.

(a) For the protection of the public health and safety, the Department of Community Health, with regard to radiation generating equipment, and the Department of Natural Resources, with regard to radioactive materials, are empowered to:

- (1) Develop comprehensive policies and programs for the evaluation, determination, and amelioration of hazards associated with the use of radiation. Such policies and programs shall be developed with due regard for compatibility with federal programs;

(2) Advise, consult, and cooperate with other public agencies and with affected groups and industries;

(3) Encourage, participate in, or conduct studies, investigations, public hearings, training, research, and demonstrations relating to the control of sources of radiation, the effect upon public health and safety of exposure to radiation, and related problems;

(4) Adopt, promulgate, amend, and repeal such rules, regulations, and standards which may provide for licensing or registration relating to the distribution, assembly, manufacture, production, transportation, use, handling, storage, disposal, sale, lease, or other disposition of radioactive material and radiation generating equipment as may be necessary to carry out this chapter, provided that prior to adoption of any regulation or standard, or amendment or repeal thereof, the Department of Community Health or the Department of Natural Resources, as is appropriate, shall afford interested parties an opportunity, at a public hearing conducted as provided in Article 1 of Chapter 5 of this title, to submit data or views orally or in writing. The recommendations of nationally recognized bodies in the field of radiation protection shall be taken into consideration when formulating standards relative to the permissible dosage of radiation;

(5) Issue, modify, or revoke orders, in connection with proceedings under this chapter, prohibiting or abating the discharge of radiation and radioactive material or waste into the ground, air, or waters of the state, except that the Department of Natural Resources shall not prohibit discharges expressly permitted by the federal Nuclear Regulatory Commission or any successor agency;

(6) Require the submission of plans, specifications, and reports for new construction and material alterations on (A) the design and protective shielding of installations for radioactive material and radiation generating equipment; and (B) systems for the disposal of radioactive waste materials and for the determination of any radiation hazard; and render opinions, approve, or disapprove such plans and specifications;

(7) Require all sources of radiation to be shielded, transported, handled, used, stored, or disposed of in such a manner to provide compliance with this chapter and rules, regulations, and standards adopted pursuant to this chapter;

(8) Collect and disseminate information relating to the control of sources of radiation, including but not limited to (A) maintenance of a file of all license applications, issuances, denials, amendments, transfers, renewals, modifications, suspensions, and revocations; and (B) maintenance of a file of registrants possessing sources of radiation requiring registration under this chapter, regulations promulgated

pursuant to this chapter, and any administrative or judicial action pertaining thereto;

(9) Exempt certain sources of radiation or kinds of uses or users from the licensing or registration requirements set forth in this chapter when the Department of Community Health or the Department of Natural Resources, as is applicable, determines that the exemption of such sources of radiation or kinds of uses or users will not constitute a significant risk to the health and safety of the public;

(10) Adopt and promulgate rules and regulations pursuant to this chapter which may provide for recognition of other state and federal licenses as the Department of Community Health or the Department of Natural Resources shall deem desirable, subject to such registration requirements as may be prescribed by the applicable department; and

(11) Exercise all incidental powers necessary to administer this chapter.

(b) The Department of Community Health and the Department of Natural Resources are authorized to enter upon any public or private property at all reasonable times for the purpose of determining compliance with applicable provisions of this chapter and rules, regulations, and standards adopted pursuant to this chapter.

(c) The Department of Community Health and the Department of Natural Resources are authorized to enter into appropriate agreements with the federal government, other states, or interstate agencies, whereby this state will perform, on a cooperative basis with the federal government, other states, or interstate agencies, inspections and other functions related to the control of radiation.

(d) The Department of Community Health and the Department of Natural Resources are authorized to institute appropriate training programs for the purpose of qualifying personnel to administer applicable provisions of this chapter and may make such personnel available for participation in any programs of the federal government, other states, or interstate agencies in furtherance of the purposes of this chapter. (Code 1933, §§ 88-1306, 88-1308, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1965, p. 365, § 1; Ga. L. 1973, p. 920, § 4; Ga. L. 1976, p. 1567, § 5; Ga. L. 1988, p. 1670, § 2; Ga. L. 1990, p. 711, § 1; Ga. L. 2009, p. 453, § 1-4/HB 228.)

Law reviews. — For article surveying recent legislative and judicial developments in zoning, planning and environ-

mental law, see 31 Mercer L. Rev. 89 (1979).

31-13-6. Bonding licensees.

(a) The Department of Natural Resources may require the posting of a bond not to exceed \$5 million by an existing general or specific licensee by amendment to an existing license or by a person making an application for a new general or specific license, in order to assure the availability of funds to the state in the event of abandonment, insolvency, or other inability of a licensee to meet the requirements of the Department of Natural Resources for the safe collection and disposition of sources of ionizing radiation from radioactive material in the event of an accident, discontinuance of operation, or any circumstance which results in a potential radiation hazard at a site occupied by the licensee or formerly under its possession, ownership, or control. The Department of Natural Resources is authorized to establish, by rule or regulation, the bonding requirements by classes of licensees and by range of monetary amounts not to exceed \$5 million. In establishing such requirements, the Department of Natural Resources shall give due consideration to the probable extent of contamination, the amount of possible property damage, the costs of removal and disposal of radioactive material used by the licensee, and the costs of reclamation of the property in the event of abandonment, insolvency, or other inability of the licensee to perform such services to the satisfaction of the Department of Natural Resources; provided, however, that a bond not less than \$5 million shall be required for any licensee offering commercial radiation sterilization services, excluding hospitals, blood banks, and physicians' offices.

(b) The Department of Natural Resources shall have authority upon finding that conditions under this Code section have not been met or when it determines that an imminent hazard to the public health and welfare exists to require forfeiture of the bond and use the money therefrom to take any action deemed necessary to protect the public health and welfare.

(c) A licensee who abandons a site or facility without taking the required actions to meet the requirements of the Department of Natural Resources shall be guilty of a misdemeanor.

(d) Any bonding or financial protection requirements established by the Department of Natural Resources pursuant to this Code section shall not apply to the state or any agency of the state. (Ga. L. 1979, p. 1059, § 1; Ga. L. 1990, p. 711, § 1; Ga. L. 1991, p. 1411, § 1.)

31-13-7. Permits for disposal of radioactive waste; bonding of permittees.

(a) No person shall construct or operate a site or other facility for the concentration, storage, or burial of radioactive waste without first

securing a permit for such construction or operation from the director of the Environmental Protection Division of the Department of Natural Resources. The director, under the conditions he prescribes, may require the submission of such plans, specifications, and other information as he deems relevant in connection with the issuance of such permit. The director may issue a permit for the construction or operation of such a site or other facility upon a determination that the construction or operation would be consistent with the purposes and stated policy of this chapter. Any permit which may be issued by the director shall specify the conditions under which the site or facility shall be operated. The director, in specifying such conditions, shall have the power and authority to require a permittee to establish and maintain records; to make reports; to install, maintain, and use monitoring equipment or methods including, but not limited to, biological monitoring methods or emission and ambient monitoring devices; to sample any emission or discharge in accordance with such methods, at such locations, at such intervals, and in such manner as the director shall prescribe; and to provide such other information as he may reasonably require. Any permit issued shall be subject to periodic review; and the director may revoke or modify any permit if the holder fails to comply with any conditions thereof. The director is authorized to adopt, modify, repeal, and promulgate, after due notice and public hearing held in accordance with and established pursuant to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," rules and regulations not inconsistent with this Code section, for purposes of administering this Code section.

(b) The director may require the posting of a bond by the proposed permittee or operator, payable to the state, as a condition of any permit, in order to assure the availability of funds to the state in the event of abandonment, insolvency, or other inability of a permittee to meet the requirements of the Environmental Protection Division of the Department of Natural Resources for the safe collection and disposition of sources of ionizing radiation in the event of an accident, discontinuance of operation, or any circumstance which results in a potential radiation hazard at a site or facility for the concentration, storage, or burial of radioactive waste, which site is occupied by the permittee or was formerly under its possession, ownership, or control. The Environmental Protection Division of the Department of Natural Resources is authorized to establish, by rule or regulation, the bonding requirements of permittees by range of monetary amounts. In establishing such requirements, the director of the Environmental Protection Division shall give due consideration to the probable extent of contamination, the amount of possible property damage, the costs of removal and disposal of sources of radiation used by the permittee, and the costs of reclamation of the property in the event of abandonment, insolvency, or

other inability of the permittee to perform such services to the satisfaction of the director. The director shall have authority upon finding that conditions under this Code section have not been met or when he determines that an imminent hazard to the public health and welfare exists to require forfeiture of bond and use the money therefrom to take any action deemed necessary to protect the public health and welfare. A permittee who abandons a site or facility without taking the required actions to meet the requirements of the director of the Environmental Protection Division of the Department of Natural Resources shall be guilty of a misdemeanor. Any bonding or financial protection requirements established by the director pursuant to this Code section shall not apply to the state, or any agency of the state, or to the storage of spent fuel possessed under 10 CFR Part 50 or Part 70, which fuel was generated at an electric generating utilization facility and which is stored at such utilization facility in facilities licensed under 10 CFR Part 50 or at another such in-state utilization facility in facilities licensed under 10 CFR Part 50. (Code 1933, § 88-1306.1, enacted by Ga. L. 1968, p. 1152, § 1; Ga. L. 1976, p. 1567, § 6; Ga. L. 1979, p. 1059, § 2; Ga. L. 1985, p. 149, § 31; Ga. L. 1990, p. 711, § 1.)

Cross references. — Hazardous waste management, § 12-8-60 et seq.

RESEARCH REFERENCES

Am. Jur. 2d. — 61C Am. Jur. 2d, Pollution Control, §§ 676, 1469 et seq.

31-13-8. Licensing users of by-product, source, and special nuclear materials as sources of ionizing radiation.

(a) The Governor, on behalf of this state, is authorized to enter into agreements with the federal government providing for discontinuance of certain responsibilities of the federal government with respect to sources of ionizing radiation and the assumption of such responsibilities by this state.

(b) Upon the signing of the contract as provided in subsection (a) of this Code section, the Department of Natural Resources shall provide by rule or regulation for general or specific licensing of persons to use, manufacture, produce, transport, transfer, receive, acquire, own, or possess by-product, source, or special nuclear materials or devices, installations, or equipment utilizing such materials. Such rule or regulation shall provide for amendment, suspension, or revocation of licenses. Each application for a specific license shall be in writing on forms prescribed and furnished by the Department of Natural Resources and shall state such information and be accompanied by such documents, including, but not limited to, plans, specifications, and

reports for new construction or material alterations, as the Department of Natural Resources may determine to be reasonable and necessary to decide the qualifications of the applicant to protect the public health and safety. The Department of Natural Resources may require any applications or statements to be made under oath or affirmation. Each license shall be in such form and contain such terms and conditions as the Department of Natural Resources may deem necessary. No license issued under the authority of this chapter and no right to possess or utilize sources of ionizing radiation granted by any license shall be assigned or in any manner disposed of; and the terms and conditions of all licenses shall be subject to amendment, revision, or modification by rules, regulations, or orders issued in accordance with this chapter. (Code 1933, § 88-1307, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1976, p. 1567, § 7; Ga. L. 1988, p. 1670, § 3; Ga. L. 1990, p. 711, § 1.)

31-13-8.1. General or specific licensing for use, manufacture, transport, transactions in, and possession of radioactive material.

The Department of Natural Resources shall establish, manage, and administer a program for the general or specific licensing of persons to use, manufacture, produce, transport, transfer, receive, acquire, own, or possess radioactive material including by-product, source, or special nuclear materials or devices, installations, or equipment utilizing such materials, including the promulgation of such rules and regulations as the Board of Natural Resources may deem necessary to implement and enforce the program. Such rules or regulations shall provide for amendment, suspension, or revocation of licenses. Each application for a specific license shall be in writing on forms prescribed and furnished by the Department of Natural Resources and shall state such information and be accompanied by such documents, including, but not limited to, plans, specifications, and reports for new construction or material alterations, as the Department of Natural Resources may determine to be reasonable and necessary to decide the qualifications of the applicant to protect the public health and safety. The Department of Natural Resources may require any applications or statements to be made under oath or affirmation. Each license shall be in such form and contain such terms and conditions as the Department of Natural Resources may deem necessary. No license issued under the authority of this chapter and no right to possess or utilize sources of ionizing radiation granted by any license shall be assigned or in any manner disposed of; and the terms and conditions of all licenses shall be subject to amendment, revision, or modification by rules, regulations, or orders issued in accordance with this chapter. (Code 1981, § 31-13-8.1, enacted by Ga. L. 1988, p. 1670, § 4; Ga. L. 1990, p. 711, § 1.)

31-13-8.2. Licensing of diagnostic and therapeutic medical uses of radioactive materials.

The Department of Community Health is authorized to provide by rule or regulation for the registration and periodic renewal of registration of persons to sell, distribute, assemble, use, manufacture, produce, transport, transfer, receive, acquire, own, or possess radiation generating equipment. Such rule or regulation shall provide for suspension or revocation of registration. Each application for registration shall be in writing on forms prescribed and furnished by the Department of Community Health and shall state such information and be accompanied by such documents, including, but not limited to, plans, specifications, and reports for new construction or material alterations, as the Department of Community Health may determine to be reasonable and necessary to decide the qualifications of the applicant to protect the public health and safety. The Department of Community Health may require any applications or statements to be made under oath or affirmation. No registration issued under the authority of this chapter and no right to possess or utilize radiation generating equipment granted by any registration shall be assigned or in any manner disposed of without prior notification to the Department of Community Health. (Code 1981, § 31-13-8.3, enacted by Ga. L. 1988, p. 1670, § 4; Code 1981, § 31-13-8.2, as redesignated by Ga. L. 1990, p. 711, § 1; Ga. L. 2009, p. 453, § 1-4/HB 228.)

Editor's notes. — Ga. L. 1990, p. 711, § 1, effective April 4, 1990, repealed former Code Section 31-13-8.2, concerning licensing of diagnostic and therapeutic medical uses of radioactive materials, which was based on Ga. L. 1988, p. 1670, § 4.

31-13-9. Records of use of radiation sources and exposure of employees to radiation.

(a) The Department of Community Health and the Department of Natural Resources are authorized to require, in accordance with applicable provisions of this chapter, each person who possesses or uses a source of radiation (1) to maintain appropriate records relating to its receipt, storage, use, transfer, or disposal and to maintain such other records as the Department of Community Health or the Department of Natural Resources, as is applicable, may require, subject to such exemptions as may be provided by rules and regulations; and (2) to maintain appropriate records showing the radiation exposure of all individuals for whom personnel monitoring may be required by the Department of Community Health or the Department of Natural Resources, as is applicable, subject to such exemptions as may be provided by rules and regulations. Copies of all records required to be kept by this subsection shall be submitted to the Department of

Community Health or the Department of Natural Resources, as is appropriate, or the duly authorized agents of such department upon request.

(b) The Department of Community Health and the Department of Natural Resources are authorized to require, in accordance with applicable provisions of this chapter, any person possessing or using a source of radiation to furnish, at the request of any employee for whom personnel monitoring is required, a copy of such employee's personal exposure record annually, upon termination of employment, and at any time such employee has received excessive exposure. (Code 1933, § 88-1309, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1990, p. 711, § 1; Ga. L. 2009, p. 453, § 1-4/HB 228.)

OPINIONS OF THE ATTORNEY GENERAL

Department authorized to require licensees to notify employees of excessive radiation exposure. — Ample statutory authority exists for Department of Public Health (now Department of Human Resources) to require persons or

firms licensed under the Georgia Radiation Control Act to notify an employee in writing when the employee has received radiation exposure in excess of prescribed limits. 1968 Op. Att'y Gen. No. 68-299.

31-13-10. Suspension, revocation, and amendment of license or registration; emergency orders; review.

(a) The Department of Natural Resources may refuse to grant a license as provided in Code Section 31-13-8 or 31-13-8.1 and the Department of Community Health may refuse to register radiation generating equipment as provided in Code Section 31-13-8.2 to any applicant who does not possess the applicable requirements or qualifications which the Department of Natural Resources or the Department of Community Health, as applicable, may prescribe in rules and regulations. The Department of Natural Resources or the Department of Community Health may suspend, revoke, or amend any license or registration, respectively, in the event the person to whom such license or registration was granted violates any of the rules and regulations of the Department of Natural Resources or the Department of Community Health, whichever is applicable, or ceases or fails to have the reasonable facilities prescribed by the Department of Natural Resources or the Department of Community Health, provided that, before any order is entered denying an application for a license or registration or suspending, revoking, or amending a license or registration previously granted, the applicant or person to whom such license or registration was granted shall be given notice and granted a hearing as provided in Article 1 of Chapter 5 of this title.

(b) Whenever the Department of Natural Resources or the Department of Community Health finds that an emergency exists involving

any licensee or registrant requiring immediate action to protect the public health and safety, the Department of Natural Resources or the Department of Community Health, as is appropriate, may, without notice or hearing, issue an order reciting the existence of such emergency and requiring that such action be taken as is necessary to meet the emergency. Notwithstanding any provisions of this chapter, such order shall be effective immediately. Any person to whom such order is directed shall comply therewith immediately but on application to the Department of Natural Resources or the Department of Community Health, as is appropriate, shall be afforded a hearing within ten days. On the basis of such hearing, the emergency order shall be continued, modified, or revoked within 30 days after such hearing, as the Department of Natural Resources or the Department of Community Health, as is appropriate, may deem appropriate under the evidence.

(c) Any applicant or person to whom a license or registration was granted who is aggrieved by any order of the Department of Natural Resources or the Department of Community Health or the duly authorized agent of such department denying any such application or suspending, revoking, or amending such license or registration may file a hearing request with the appropriate agency to contest such action pursuant to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." (Code 1933, § 88-1310, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1988, p. 1670, § 5; Ga. L. 1990, p. 711, § 1; Ga. L. 2009, p. 453, § 1-4/HB 228.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1988, punctuation changes were made at the end of subsection (c).

31-13-11. Impounding and condemnation of radiation generating equipment and radioactive materials.

(a) In the event of an emergency, the Department of Community Health shall have the authority to impound or order the impounding of radiation generating equipment in the possession of any person who is not equipped to observe or fails to observe the provisions of this chapter or any rules or regulations issued pursuant to this chapter.

(b) The Department of Community Health may release such radiation generating equipment to the owner thereof upon terms and conditions in accordance with this chapter and rules and regulations adopted pursuant to this chapter or may bring an action in the appropriate superior court for an order condemning such radiation generating equipment and providing for its destruction or other disposition so as to protect the public health and safety.

(c) In the event of an emergency, the Department of Natural Resources shall have the authority to impound or order the impounding of

radioactive materials in the possession of any person who is not equipped to observe or fails to observe the provisions of this chapter or any rules and regulations issued pursuant to this chapter.

(d) The Department of Natural Resources may release such radioactive materials to the owner thereof upon terms and conditions in accordance with this chapter and rules and regulations adopted pursuant to this chapter or may bring an action in the appropriate superior court for an order condemning such radioactive materials and providing for their destruction or other disposition so as to protect the public health and safety. (Code 1933, § 88-1311, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1973, p. 920, § 5; Ga. L. 1990, p. 711, § 1; Ga. L. 2009, p. 453, § 1-4/HB 228.)

31-13-12. License required.

It shall be unlawful for any person to use, manufacture, assemble, distribute, produce, transport, receive, acquire, own, or possess any source of radiation required to be licensed or registered under this chapter unless licensed by or registered with the Department of Natural Resources or the Department of Community Health, respectively, in accordance with this chapter and rules and regulations adopted and promulgated pursuant to this chapter. (Code 1933, § 88-1312, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1973, p. 920, § 6; Code 1981, § 31-13-14; Ga. L. 1988, p. 1670, § 6; Code 1981, § 31-13-12, as redesignated by Ga. L. 1990, p. 711, § 1; Ga. L. 2009, p. 453, § 1-4/HB 228.)

Editor's notes. — Ga. L. 1990, p. 711, § 1, repealed former Code Section 31-13-12, concerning prohibited uses of radiation sources, which was based on Ga. L. 1973, p. 920, § 6, and redesignated former Code Section 31-13-14 as present Code Section 31-13-12.

31-13-13. Penalties.

(a) Any person who violates the provisions of Code Section 31-13-7 or any rule or regulation promulgated pursuant to such Code section, or who violates the provisions of Code Section 31-13-12, or who hinders, obstructs, or otherwise interferes with any representative of the Department of Community Health or the Department of Natural Resources in the discharge of his official duties in making inspections as provided in Code Section 31-13-5 or in impounding materials as provided in Code Section 31-13-11 shall be guilty of a misdemeanor.

(b)(1) Any person who:

(A) Violates any licensing or registration provision of this chapter or any rule, regulation, or order issued under this chapter or

any term, condition, or limitation of any license or registration certificate under this chapter; or

(B) Commits any violation for which a license or registration certificate may be revoked under rules or regulations issued pursuant to this chapter

may be subject to a civil penalty, to be imposed by the Department of Natural Resources or the Department of Community Health, as is applicable, not to exceed \$10,000.00. If any violation is a continuing one, each day of such violation shall constitute a separate violation for the purpose of computing the applicable civil penalty.

(2) Whenever the Department of Community Health proposes to subject a person to the imposition of a civil penalty under this subsection, it shall notify such person in writing:

(A) Setting forth the date, facts, and nature of each act or omission with which the person is charged;

(B) Specifically identifying the particular provision or provisions of the Code section, rule, regulation, order, license, or registration certificate involved in the violation; and

(C) Advising of each penalty which the Department of Community Health proposes to impose and its amount.

Such written notice shall be sent by registered or certified mail or statutory overnight delivery by the Department of Community Health to the last known address of such person. The person so notified shall be granted an opportunity to show in writing, within such reasonable period as the Department of Community Health shall by rule or regulation prescribe, why such penalty should not be imposed. The notice shall also advise such person that, upon failure to pay the civil penalty, if any, subsequently determined by the Department of Community Health, the penalty may be collected by civil action. Any person upon whom a civil penalty is imposed may contest such action in an administrative hearing pursuant to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

(3) On the request of the Department of Community Health, the Attorney General is authorized to institute a civil action to collect a penalty imposed pursuant to this subsection. The Attorney General shall have the exclusive power to compromise, mitigate, or remit such civil penalties as are referred to him for collection.

(4) All moneys collected from civil penalties shall be paid to the state for deposit in the general fund. (Code 1933, § 88-1313, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1976, p. 1567, § 8; Code 1981, § 31-13-15; Ga. L. 1984, p. 1428, § 1; Code 1981, § 31-13-13, as

redesignated by Ga. L. 1990, p. 711, § 1; Ga. L. 2000, p. 1589, § 3; Ga. L. 2009, p. 453, § 1-4/HB 228.)

Editor's notes. — Ga. L. 1990, p. 711, § 1, repealed former Code Section 31-13-13, concerning penalties, which was based on Ga. L. 1976, p. 1567, § 8, and redesignated former Code Section 31-13-15 as present Code Section 31-13-13.

Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provided that subparagraph (b)(2)(C) of this Code section was applicable to notices delivered on or after July 1, 2000.

31-13-14. Inspections and investigations.

The director or his duly authorized representatives shall have the power to enter at reasonable times upon any private or public property for the purpose of inspection and investigation of conditions relating to the handling of radioactive materials in the state. (Code 1981, § 31-13-14, enacted by Ga. L. 1990, p. 711, § 1.)

Editor's notes. — Ga. L. 1990, p. 711, § 1, redesignated former Code Section 31-13-14 as present Code Section 31-13-12.

31-13-15. Investigation of apparent violations; initiation of legal proceedings.

The director shall have the authority to investigate any apparent violation of this chapter and to take any action authorized under this chapter as he deems necessary and may institute proceedings of mandamus or other proper legal proceedings to enforce this chapter. (Code 1981, § 31-13-15, enacted by Ga. L. 1990, p. 711, § 1.)

Editor's notes. — Ga. L. 1990, p. 711, § 1, redesignated former Code Section 31-13-15 as present Code Section 31-13-13.

31-13-16. Authorization to remedy violation by conference, conciliation, or persuasion; order to undertake corrective action.

Whenever the director has reason to believe that a violation of any provision of this chapter or any rule or regulation adopted pursuant to this chapter has occurred, he shall attempt to obtain a remedy with the violator or violators by conference, conciliation, or persuasion. In the case of failure of such conference, conciliation, or persuasion to effect a remedy to such violation, the director may issue an order directed to such violator or violators. The order shall specify the provisions of this chapter or rule or regulation alleged to have been violated and shall order that necessary corrective action be taken within a reasonable time to be prescribed in such order. Any order issued by the director under this chapter shall be signed by the director. Any such order shall

become final unless the person or persons named therein request in writing a hearing before the director no later than 30 days after such order is served on such person or persons. (Code 1981, § 31-13-16, enacted by Ga. L. 1990, p. 711, § 1.)

31-13-17. Declaration of existence of emergency.

Whenever the director finds that an emergency exists requiring immediate action to protect the public health, safety, or well-being, the director, with the concurrence of the Governor, may issue an order declaring the existence of such an emergency and requiring that such action be taken to meet the emergency as the director specifies. Such order shall be effective immediately. Any person to whom such order is directed shall comply therewith immediately, but on application to the director shall be afforded a hearing within 48 hours. On the basis of such hearing, the director may continue such order in effect, revoke it, or modify it. (Code 1981, § 31-13-17, enacted by Ga. L. 1990, p. 711, § 1.)

31-13-18. Hearing on order or notice of action.

Whenever a person is aggrieved or adversely affected by any action or by any order or orders of the director, such person may request and obtain a hearing by filing a petition with the director within 30 days after service of the order or notice of action. Such hearing and any other hearing under this chapter shall be conducted pursuant to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." (Code 1981, § 31-13-18, enacted by Ga. L. 1990, p. 711, § 1.)

31-13-19. Judicial review.

Any person who has exhausted all administrative remedies available before the director and who is aggrieved by a final order or action in a contested case is entitled to judicial review under this chapter. In this connection, all proceedings for judicial review shall be conducted in accordance with subsections (b) through (h) of Code Section 50-13-19, and any party to the proceeding may secure a review of the final judgment of the superior court by appeal in the manner and form provided by law for appeals from the superior courts to the appellate courts of this state. (Code 1981, § 31-13-19, enacted by Ga. L. 1990, p. 711, § 1.)

31-13-20. Filing certified copy of unappealed final order or affirmed order.

The director may file in the superior court of the county wherein the person under order resides or, if such person is a corporation, in the

county wherein the corporation maintains its principal place of business or, in any case, in the county wherein the violation occurred or in which jurisdiction is appropriate a certified copy of an unappealed final order of the director or of a final order of the director affirmed upon appeal whereupon such court shall render judgment in accordance therewith and notify the parties. Such judgment shall have the same effect and all proceedings in relation thereto shall thereafter be the same as though such judgment had been rendered in an action duly heard and determined by such court. (Code 1981, § 31-13-20, enacted by Ga. L. 1990, p. 711, § 1.)

31-13-21. Temporary or permanent injunction; restraining order.

Whenever, in the judgment of the director, any person has engaged in or is about to engage in any act or practice which constitutes or will constitute any violation of this chapter, the director may apply to the superior court of the county where such person resides or, if such person is a nonresident of the state, to the superior court of the county where such person is engaged in or is about to engage in such act or practice for an order restraining and enjoining such act or practice. Upon a showing by the director that such person has engaged in or is about to engage in any such act or practice, a temporary or permanent injunction, restraining order, or other order shall be granted without the necessity of showing lack of an adequate remedy at law. (Code 1981, § 31-13-21, enacted by Ga. L. 1990, p. 711, § 1.)

31-13-22. Representation of director in actions.

It shall be the duty of the Attorney General or his representative to represent the director in all actions in connection with this chapter. (Code 1981, § 31-13-22, enacted by Ga. L. 1990, p. 711, § 1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1990, this Code section, which was inadvertently designated as Code Section 33-13-22 in Ga. L. 1990, p. 711, § 1, was renumbered as Code Section 31-13-22.

31-13-23. Transfer of powers and duties between Department of Natural Resources and Department of Community Health.

The Governor shall have the authority to transfer powers and duties enumerated in this chapter between the Department of Natural Resources and the Department of Community Health as he deems appropriate by executive order. (Code 1981, § 31-13-23, enacted by Ga. L. 1990, p. 711, § 1; Ga. L. 2009, p. 453, § 1-4/HB 228.)

31-13-24. Effect on proceedings commenced before April 4, 1990; continuation of federal aid to agency receiving transfer of functions.

This chapter shall not affect the validity of any judicial or administrative proceeding pending or which was commenced before April 4, 1990, and any successor department shall be substituted as the proper party at interest. Furthermore, upon the transfer of any function under this chapter, the agency assuming the transfer and performing the function in the future shall be construed as a continuation of the original agency for the purpose of federal aid and may continue to receive any such funds to carry out or perform such functions. (Code 1981, § 31-13-24, enacted by Ga. L. 1990, p. 711, § 1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1990, “April 4, 1990” was substituted for “the effective date of the applicable provisions of this chapter” in the first sentence.

31-13-25. Rules, regulations, agreements, and contracts formerly under Department of Human Resources (now known as the Department of Community Health for these purposes).

All rules and regulations, agreements, contracts, or other instruments which involve radioactive materials heretofore under the jurisdiction of the Department of Human Resources (now known as the Department of Community Health for these purposes) will, by operation of law, be assumed by the Department of Natural Resources on April 4, 1990. (Code 1981, § 31-13-25, enacted by Ga. L. 1990, p. 711, § 1; Ga. L. 1991, p. 94, § 31; Ga. L. 2009, p. 453, § 1-38/HB 228.)

CHAPTER 14

HOSPITALIZATION FOR TUBERCULOSIS

Sec.		Sec.	
31-14-1.	"Active tuberculosis" defined; declaration of policy.	31-14-8.1.	Continuation of confinement of patient; report required; hearing.
31-14-2.	Petition for commitment.	31-14-8.2.	Appeal from orders of superior court or hearing examiner; costs; right to counsel.
31-14-3.	Hearing on petition; notice; physical examination; court costs; attorney's fee; conduct of hearing.	31-14-9.	Procedure for securing discharge; petition for habeas corpus.
31-14-4.	Service of copy of petition and order; penalty for failure to comply.	31-14-10.	Enforcement of rules and regulations by county boards of health.
31-14-5.	Circumstances allowing custody pending hearing.	31-14-11.	Unauthorized leave of committed person from hospital or facility.
31-14-6.	Report of persons making examination; service of copies.	31-14-12.	Applicability of commitment provisions to persons who obey rules and regulations of department.
31-14-7.	Results of hearing; commitment to hospital or facility; dismissal of petition and release from custody; costs of transportation; review of commitment order.	31-14-13.	Order directing compliance with plan of evaluation or outpatient treatment; contempt.
31-14-8.	Period of confinement of patients committed under chapter.	31-14-14.	Immunity from liability.

Cross references. — Designation of department as agency responsible for supervision and administrative control of state hospitals for treatment of tubercular patients, § 37-1-21.

Administrative rules and regulations. — Tuberculosis control, Official Compilation of the Rules and Regulations

of the State of Georgia, Department of Human Resources (now the Department of Community Health for these purposes), Public Health, Chapter 290-5-16.

Law reviews. — For note on 1995 amendments and enactments of Code sections in this chapter, see 12 Ga. St. U.L. Rev. 247 (1995).

31-14-1. "Active tuberculosis" defined; declaration of policy.

(a) As used in this chapter, the term "active tuberculosis" means a diagnosis demonstrated by clinical, bacteriologic, or diagnostic imaging evidence, or a combination thereof. Persons who have been diagnosed as having active tuberculosis and have not completed a course of antituberculosis treatment are still considered to have active tuberculosis and may be infectious.

(b) Active tuberculosis is declared to be dangerous to the public health. (Ga. L. 1953, Nov.-Dec. Sess., p. 348, § 1; Code 1933, § 88-701, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 2005, p. 1513, § 1/SB 56.)

31-14-2. Petition for commitment.

When the county board of health or the Department of Public Health has evidence that any person has active tuberculosis and is violating the rules and regulations promulgated by the department or the orders issued by the county board of health and thereby presents a substantial risk of exposing other persons to an imminent danger of infection, after having been directed by the county board of health or the department to comply with such rules, regulations, or orders, the county board of health or the department shall institute proceedings by petition for commitment, returnable to the superior court of the county wherein such person resides or, if such person is a nonresident or has no fixed place of abode, in the county wherein such person may be found. The petition executed under oath shall state the specific evidence supporting the allegations, that the evidence has existed within the preceding 30 days, that the person named therein has active tuberculosis and is violating the rules and regulations of the department or the orders of the county board of health and presents a substantial risk of exposing other persons to an imminent danger of infection, after having been directed by the county board of health or department to comply with such rules, regulations, or orders, and that the public health requires commitment of the person named therein. The petition must be accompanied by a certificate of a physician stating that the physician knows or suspects that the person named therein may have active tuberculosis, the evidence which forms the basis of this opinion, and whether a full evaluation of the person is necessary. (Ga. L. 1953, Nov.-Dec. Sess., p. 348, § 4; Code 1933, § 88-704, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1995, p. 1231, § 1; Ga. L. 2005, p. 1513, § 1/SB 56; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214.)

The 2011 amendment, effective July 1, 2011, substituted “Department of Public Health” for “Department of Community Health” in the first sentence of this Code section.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

OPINIONS OF THE ATTORNEY GENERAL

Involuntary commitment of one with infectious tuberculosis who becomes intoxicated. — If a person with infectious tuberculosis becomes intoxicated it is possible that the person's be-

havior might subject the person to involuntary commitment, but only if the person is conducting oneself so as to expose other persons. 1972 Op. Att’y Gen. No. U72-106.

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Health, §§ 53 et seq., 64 et seq.

C.J.S. — 39A C.J.S., Health and Environment, §§ 28 et seq., 46.

31-14-3. Hearing on petition; notice; physical examination; court costs; attorney's fee; conduct of hearing.

(a) Immediately upon the filing of a petition pursuant to Code Section 31-14-2, the judge of the superior court shall set the matter for a full and fair hearing on the petition. Such hearing shall be held no sooner than seven days and no later than 12 days, excluding Saturdays, Sundays, and holidays, subsequent to the time of filing of the petition. The court shall serve personal notice of the hearing upon the person named in the petition and upon the petitioner. The notice required by this Code section shall include the time and place of the hearing; notice of the person's right to counsel, that the person may apply for court appointed counsel if the person cannot afford counsel, and that the court will appoint counsel unless the person indicates in writing that he or she does not wish to be represented by counsel; and notice that the person may waive his or her rights to a hearing under this Code section. A copy of the petition and physician's certificate filed under Code Section 31-14-2 shall be attached to the notice. The judge shall, where prayed for in the petition, provide for the examination of the person named therein by a physician licensed under Chapter 34 of Title 43, which examination shall include sputum examinations by a laboratory approved by the department and a recent chest X-ray of good diagnostic quality interpreted by a physician licensed to practice under Chapter 34 of Title 43, as a part of the order setting the matter for hearing; the order shall require the person or persons named therein to make such examination. Any X-ray and accompanying report or any written report as to a sputum examination shall be admissible as evidence without the necessity of the personal testimony of the person or persons making such examination and report. A physician may rely upon this evidence as the basis for the diagnosis of active tuberculosis and the defendant may offer opposing evidence on this issue by testimony or otherwise. All court costs incurred in proceedings under this chapter, including costs of examinations required by order of court but excluding any examinations procured by the person named in the petition, shall be borne by the county wherein the proceedings are brought. The fee to be paid to an attorney appointed under this Code section to represent a person who cannot afford counsel shall be paid by the county board of health instituting proceedings for commitment.

(b) A full and fair hearing shall mean a proceeding before a hearing examiner under Code Section 31-14-8.1 or before the superior court in a proceeding under subsection (a) of this Code section. The hearing may

be held in a regular court room or in an informal setting, in the discretion of the hearing examiner or the court, but the hearing shall be recorded electronically or by a qualified court reporter. The person named as defendant shall be provided with the opportunity for the assistance of counsel. If the defendant cannot afford counsel, the court shall appoint counsel for the defendant or the hearing examiner shall request that the court appoint such counsel; provided, however, that the defendant shall have the right to refuse in writing appointment of counsel. Both parties shall have the right to confront and cross-examine witnesses, to offer evidence, and to subpoena witnesses. Both parties shall have the right to require testimony before the hearing examiner or in court in person or by deposition from any physician upon whose evaluation the decision of the hearing examiner or the court may rest. The hearing examiner and the court shall apply the rules of evidence applicable in civil cases, except as otherwise provided for in this chapter. The burden of proof shall be upon the party seeking commitment of the defendant. The standard of proof shall be by clear and convincing evidence. At the request of the defendant, the public may be excluded from the hearing. The defendant may waive his or her right to be present at the hearing. The reason for the action of the court or the hearing examiner in excluding the public or permitting the hearing to proceed in the defendant's absence shall be reflected in the record. (Ga. L. 1953, Nov.-Dec. Sess., p. 348, § 5; Code 1933, § 88-705, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1985, p. 620, § 1; Ga. L. 1995, p. 1231, § 1; Ga. L. 2005, p. 1513, § 1/SB 56.)

31-14-4. Service of copy of petition and order; penalty for failure to comply.

A copy of the petition and order shall be served on the person named in the petition. Any failure of such person to comply with the order or with the notice by the persons appointed therein to make examination shall be enforceable by attachment for contempt. (Ga. L. 1953, Nov.-Dec. Sess., p. 348, § 7; Code 1933, § 88-707, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 2005, p. 1513, § 1/SB 56.)

31-14-5. Circumstances allowing custody pending hearing.

Where a danger exists that the person named in the petition may abscond or conceal himself or herself or where the person is conducting himself or herself so as to present a substantial risk of exposing other persons to an imminent danger of infection, the court may, as a part of the order made pursuant to Code Section 31-14-3, direct the sheriff or the sheriff's deputies to take such person into custody pending hearing and impose such confinement as will not endanger other persons. An affidavit shall be attached to the petition containing the specific facts

supporting the need for custody pending hearing. (Ga. L. 1953, Nov.-Dec. Sess., p. 348, § 6; Code 1933, § 88-706, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1995, p. 1231, § 2; Ga. L. 2005, p. 1513, § 1/SB 56.)

31-14-6. Report of persons making examination; service of copies.

The person or persons appointed by the order to make the examination shall file a report thereof, in triplicate, in the court wherein the proceeding is pending. The clerk of the superior court shall forthwith make service of one copy on the agency instituting the proceeding and one copy on the party named as defendant therein and the defendant's attorney, which service shall be personal or by certified mail or statutory overnight delivery. (Ga. L. 1953, Nov.-Dec. Sess., p. 348, § 8; Code 1933, § 88-708, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1995, p. 1231, § 2; Ga. L. 2000, p. 1589, § 3; Ga. L. 2005, p. 1513, § 1/SB 56.)

Editor's notes. — Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provided that the 2000 amendment was applicable to notices delivered on or after July 1, 2000.

31-14-7. Results of hearing; commitment to hospital or facility; dismissal of petition and release from custody; costs of transportation; review of commitment order.

(a) Upon the hearing set in the order, if the court finds that the person has active tuberculosis, is violating the rules and regulations promulgated by the department or the orders issued by the county board of health after having been directed by the county board of health or the department to comply with such rules, regulations, or orders, presents a substantial risk of exposing other persons to an imminent danger of infection, and there is no less restrictive available alternative to involuntary treatment at a hospital or facility approved by the department for the care of tubercular patients, then the court shall issue an order committing the defendant to the custody of the sheriff of the county or the sheriff's deputies to be delivered to the designated hospital or facility, where the defendant shall be admitted for care and treatment not to exceed two years. If the court does not find that the above standards are met, then the court shall dismiss the petition and the defendant shall be released from custody if taken into custody pursuant to Code Section 31-14-5. The costs of transporting such person to the hospital or facility shall be paid out of county funds.

(b) An order for commitment shall be subject to review at the instance of either party by appeal. (Ga. L. 1953, Nov.-Dec. Sess., p. 348, §§ 9, 10; Code 1933, §§ 88-709, 88-710, enacted by Ga. L. 1964, p. 499,

§ 1; Ga. L. 1985, p. 620, § 2; Ga. L. 1995, p. 1231, § 2; Ga. L. 2005, p. 1513, § 1/SB 56.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1995, a comma was inserted following “regulations” near

the middle of the first sentence of subsection (a).

31-14-8. Period of confinement of patients committed under chapter.

Upon commitment the patient shall be confined in a hospital or facility approved by the department for the care of tubercular patients for a period not to exceed two years unless, before the expiration of such two-year period, the designated responsible physician of the tuberculosis inpatient unit determines that the following conditions no longer exist:

(1) The patient has active tuberculosis; or

(2) The patient has active tuberculosis and there is a substantial likelihood of future noncompliance with a proposed treatment plan which will predictably lead to the development of infectious drug-resistant tuberculosis. The likelihood of noncompliance must be based upon a history of noncompliance with treatment; provided, however, that short emergency leaves in the event of death or critical illness in the family or short therapeutic leaves may be granted under conditions which would not adversely affect the public health and in accordance with rules and regulations established by the department. (Ga. L. 1953, Nov.-Dec. Sess., p. 348, § 11; Ga. L. 1957, p. 271, § 1; Code 1933, § 88-711, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1985, p. 620, § 3; Ga. L. 1995, p. 1231, § 2; Ga. L. 2005, p. 1513, § 1/SB 56.)

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Health, §§ 53 et seq., 64 et seq.

C.J.S. — 39A C.J.S., Health and Environment, §§ 28 et seq., 46.

31-14-8.1. Continuation of confinement of patient; report required; hearing.

(a) If it is necessary to continue confinement of a committed patient beyond a period of two years ordered by a court or hearing examiner or authorized under subsection (d) of this Code section, the designated responsible physician of the tuberculosis inpatient unit shall review and update the patient's treatment plan and shall prepare a report giving evidence of the necessity of such continued confinement. The report shall be prepared so as to allow sufficient time for the hearing authorized by this Code section to be conducted before the expiration of

the two-year period of confinement. The report shall specify that, based upon clinical or X-ray evidence:

(1) The patient is a person having active tuberculosis requiring continued commitment; or

(2) The patient is a person having active tuberculosis with a substantial likelihood of future noncompliance with a proposed treatment plan which will predictably lead to the development of infectious drug-resistant tuberculosis. The likelihood of noncompliance must be based upon a history of noncompliance with treatment.

(b) Such report shall be filed in the patient's medical record. A copy of the report shall be personally served on the patient along with a statement that the patient may, within 15 days after service of the report, file a request for a hearing to be conducted in accordance with the procedure for contested cases under Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,' except as otherwise provided in this chapter, that the patient has a right to counsel at the hearing, that the patient may apply immediately to the superior court in the county where the committed patient is confined to have counsel appointed if the patient cannot afford counsel, and that the court will appoint counsel for the patient unless the patient indicates in writing that he or she does not desire to be represented by counsel or has made his or her own arrangements for counsel. Payment for such court appointed representation shall be made by the department. The hearing may be continued as necessary to allow the appointment of counsel.

(c) If a hearing is requested within 15 days of service of the report on the patient, the hearing examiner shall set a time and place for the hearing to be held within 15 days of the time the hearing examiner receives the request. The hearing examiner may set a hearing if a request is made later than 15 days after service of the report if good cause is shown for the delay in making the request. Notice of the hearing shall be personally served on the patient, the hospital or facility, and, when appropriate, on counsel for the patient. Such hearing shall be a full and fair hearing, as described in Code Section 31-14-3, before a hearing examiner. After such hearing, the hearing examiner may issue any order which the court is authorized to issue under Code Section 31-14-7.

(d) If a hearing is not requested within 15 days of service of the report on the patient, the department shall be authorized to continue confinement of the patient for an additional period not to exceed six months. (Code 1981, § 31-14-8.1, enacted by Ga. L. 1995, p. 1231, § 2; Ga. L. 2005, p. 1513, § 1/SB 56.)

31-14-8.2. Appeal from orders of superior court or hearing examiner; costs; right to counsel.

Either party may appeal any order of the superior court or hearing examiner in a proceeding under this chapter. An order of the superior court may be appealed to the Court of Appeals and the Supreme Court as provided by law but shall be heard as expeditiously as possible. The appeal of an order of a hearing examiner shall be to the superior court of the county in which the proceeding was held. The review shall be conducted by the superior court without a jury and shall be confined to the record. The court, upon request, may hear oral argument and receive written briefs. The patient must pay his or her costs upon filing any appeal authorized under this Code section or must make an affidavit that he or she is unable to pay costs. The parties shall retain all rights of review of any order of the superior court, the Court of Appeals, and the Supreme Court, as provided by law. The patient shall have a right to counsel on appeal or, if unable to afford counsel, shall have counsel appointed for the patient by the court. The appeal rights provided in this Code section are in addition to any other appeal rights which the parties may have. (Code 1981, § 31-14-8.2, enacted by Ga. L. 1995, p. 1231, § 2; Ga. L. 2005, p. 1513, § 1/SB 56.)

31-14-9. Procedure for securing discharge; petition for habeas corpus.

(a) At any time after commitment and not more often than once every six months, the patient or any friend or relative having reason to believe that the patient no longer has active tuberculosis or that the patient's discharge will not endanger the public health may institute proceedings by petition in the superior court of the county wherein the confinement exists, whereupon the judge shall set the matter for a hearing to occur within 15 days requiring the person or persons to whose care the patient was committed, or their duly authorized agents, to show cause on a day certain why the patient should not be discharged. The judge shall also require that the patient be allowed the right to be examined prior to the hearing by a licensed physician of the patient's own choice and at the patient's own personal expense. Thereafter all proceedings shall be conducted in the same manner as are proceedings for commitment.

(b) In addition to the above procedure for securing discharge, the patient or a friend or relative on behalf of such person may petition, as provided by law, for a writ of habeas corpus to question the cause and legality of detention and to request a court of competent jurisdiction to issue a writ for release, provided that a copy of the petition along with the proper certificate of service shall also be served upon the presiding

judge of the court ordering such detention and upon the county board of health or the Department of Public Health which initiated the petition for commitment pursuant to Code Section 31-14-2, which service shall be made by certified mail or statutory overnight delivery. (Ga. L. 1953, Nov.-Dec. Sess., p. 348, § 12; Code 1933, § 88-712, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1995, p. 1231, § 2; Ga. L. 2000, p. 1589, § 3; Ga. L. 2005, p. 1513, § 1/SB 56; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214.)

The 2011 amendment, effective July 1, 2011, substituted “Department of Public Health” for “Department of Community Health” near the end of subsection (b).

Editor’s notes. — Ga. L. 2000, p. 1589, § 16, not codified by the General Assem-

bly, provided that the 2000 amendment was applicable to notices delivered on or after July 1, 2000.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

31-14-10. Enforcement of rules and regulations by county boards of health.

The county boards of health or their duly authorized agents shall, within their respective limits, enforce rules and regulations adopted by the department for the protection of the public against active tuberculosis. (Ga. L. 1953, Nov.-Dec. Sess., p. 348, § 3; Code 1933, § 88-703, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1985, p. 620, § 4; Ga. L. 2005, p. 1513, § 1/SB 56.)

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Health, § 56 et seq.

C.J.S. — 39A C.J.S., Health and Environment, § 28 et seq.

31-14-11. Unauthorized leave of committed person from hospital or facility.

Any person who leaves a hospital or facility approved by the department for the treatment of tuberculosis to which he or she has been committed by court order, without having been discharged by the medical staff of the tuberculosis inpatient unit or the community tuberculosis control unit, shall be taken into custody and returned thereto by the sheriff of any county where such person may be found, upon affidavit being filed with the sheriff by the designated responsible official of the hospital or facility to which such person has been committed. (Ga. L. 1953, Nov.-Dec. Sess., p. 348, § 14; Code 1933, § 88-714, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1985, p. 620, § 5; Ga. L. 2005, p. 1513, § 1/SB 56.)

31-14-12. Applicability of commitment provisions to persons who obey rules and regulations of department.

No person having active tuberculosis who, in his or her home or other place, obeys the rules and regulations of the department and county boards of health for the control of active tuberculosis or who voluntarily accepts care in a hospital or facility operated for the care of tuberculosis, in his or her home, or in another place and who obeys the rules and regulations of the department and completes the prescribed course of therapy for the control of active tuberculosis shall be committed as prescribed in this chapter. (Ga. L. 1953, Nov.-Dec. Sess., p. 348, § 13; Code 1933, § 88-713, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1985, p. 620, § 6; Ga. L. 2005, p. 1513, § 1/SB 56.)

31-14-13. Order directing compliance with plan of evaluation or outpatient treatment; contempt.

(a) In lieu of the petition for commitment as authorized by Code Section 31-14-2, the county board of health or the department may petition the court for an order directing the person to comply with a plan of evaluation or outpatient treatment. The department may also petition the court for an order directing the parents, guardians, or custodians of persons under the age of 18 who have been exposed to tuberculosis to allow screening for tuberculosis by public health authorities or to provide evidence of such screening by a licensed physician. Proceedings, evidence, and hearings thereon will be in the same manner as with commitment petitions, and upon the hearing the court may dismiss the petition or order the person to comply with the screening, evaluation, or outpatient treatment plan. The court may also modify the plan prior to ordering compliance.

(b) A petition for outpatient treatment as authorized by subsection (a) of this Code section may also be initiated by a county board of health or the department where a previously hospitalized, diagnosed, or committed patient's condition no longer requires hospitalization or commitment but where protection of the public health requires continued treatment on an outpatient basis of said patient.

(c) Any person known or suspected to have tuberculosis who fails to comply with a plan of evaluation or outpatient treatment ordered pursuant to this Code section, or any parent, guardian, or custodian of a person under the age of 18 who fails to comply with screening ordered pursuant to this Code section or who aids or abets such failure may be punished as for contempt. Contempt proceedings may be initiated by the filing of a petition by the county board of health or by the department with the superior court of the county of the patient's residence or the county where the patient may be found if a nonresident

or without a fixed place of abode. (Code 1981, § 31-14-13, enacted by Ga. L. 1985, p. 620, § 7; Ga. L. 2005, p. 1513, § 1/SB 56.)

Editor's notes. — Former Code Section 31-14-13, relating to unlawful acts upon hospital grounds, including possession and use of alcohol and drugs, trespass, and escape was repealed by Ga. L. 1985, p. 149, § 31. The former Code section was based on Ga. L. 1964, p. 499, § 1.

31-14-14. Immunity from liability.

Any physician, peace officer, attorney, or health official, or any hospital or facility official, agent, or other person employed by a private hospital or facility or at a hospital or facility operated by the state, by a political subdivision of the state, by a county board of health, or by a hospital authority created pursuant to Article 4 of Chapter 7 of Title 31, who acts in good faith in compliance with the admission and discharge provisions of this chapter shall be immune from civil or criminal liability for his or her actions in connection with the admission of a patient to or the discharge of a patient from a hospital or facility approved by the department for the care of tubercular patients. (Code 1981, § 31-14-14, enacted by Ga. L. 1995, p. 1231, § 3; Ga. L. 2005, p. 1513, § 1/SB 56.)

JUDICIAL DECISIONS

Cited in *Turpen v. Rabun County Bd. of Comm'rs*, 245 Ga. App. 190, 537 S.E.2d 435 (2000).

CHAPTER 15

CARE AND TREATMENT OF CANCER PATIENTS

Sec.		Sec.	
31-15-1.	Findings; declaration of purpose.	31-15-4.	Cancer control officer.
31-15-2.	Establishment of program.	31-15-5.	Duties of commissioner.
31-15-3.	Functions of the Cancer Advisory Committee; membership; terms of office; vacancies.	31-15-6.	Right to benefits under other programs.

Cross references. — Cancer research program fund, § 31-12-14. Use of marijuana for treatment of cancer, § 43-34-120 et seq.

Administrative rules and regulations. — Cancer state aid program, Offi-

cial Compilation of the Rules and Regulations of the State of Georgia, Department of Human Resources (now the Department of Community Health for these purposes), Chapter 290-5-10.

RESEARCH REFERENCES

ALR. — Cancer as compensable under workers' compensation acts, 19 ALR4th 639.

31-15-1. Findings; declaration of purpose.

(a) It is declared and found that one of the most serious and tragic problems facing the public health and welfare is the death of thousands of persons in this state every year from cancer, although the present state of medical arts and technology could return many of these persons to a socially productive life. Advances and discoveries in the treatment of patients suffering from cancer now allow not mere survival, but rehabilitation of these patients to their normal occupations and activities. Presently, many of these patients are dying for lack of personal financial resources to pay for the care which they need.

(b) The state recognizes its responsibilities to allow its citizens to keep their health without being pauperized and to use its resources and organization to aid in gathering and disseminating information on the treatment of cancer. (Code 1933, § 88-2501a, enacted by Ga. L. 1977, p. 753, § 1.)

31-15-2. Establishment of program.

The Department of Public Health shall establish a program for prevention, control, and treatment of cancer which shall include the care of cancer patients who require lifesaving therapy but are unable to

pay for such services. (Code 1933, § 2502a, enacted by Ga. L. 1977, p. 753, § 1; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214.)

The 2011 amendment, effective July 1, 2011, substituted “Department of Public Health” for “Department of Community Health” in this Code section.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

31-15-3. Functions of the Cancer Advisory Committee; membership; terms of office; vacancies.

(a) The Governor shall appoint a Cancer Advisory Committee to advise the department in the administration of this chapter. The committee shall establish priorities and recommend relative budgets for the various purposes of this chapter as described below.

(b) The Cancer Advisory Committee shall consist of 18 members appointed by the Governor as follows:

(1) Four members representing medical schools as follows: The term of office of those two members appointed from a list of names submitted to the Governor by the deans of the medical schools located within this state, which members are serving as such on June 30, 1985, shall expire on that date and upon the appointment and qualification of the first two members appointed by the Governor in 1985 pursuant to this paragraph. On and after July 1, 1985, four membership positions on the committee shall represent the four medical schools, whether public or private, located within this state. The deans of those schools shall each submit to the Governor a list of three names and the Governor shall appoint one member from each of those four lists;

(2) Two members shall be appointed by the Governor from a list of six names submitted to him by the chief executive officers of the hospitals or cancer clinics located within Georgia which are equipped to provide modern treatment for patients suffering from cancer;

(3) Two members shall be appointed by the Governor from a list of six names submitted to him by the Medical Association of Georgia;

(4) Two members shall be appointed by the Governor from a list of six names submitted to him by the American Cancer Society, Georgia Division;

(5) The term of office of the two members appointed from the list of names submitted to the Governor by the Georgia Cancer Management Network, Inc., shall expire upon July 1, 1985, and such two membership positions shall thereafter be abolished;

(6) One member shall be appointed by the Governor from a list of three names submitted to him by the Georgia Claims Association and the Georgia Chapter of the Health Insurance Association of America;

(7) One member shall be appointed by the Governor from a list of three names submitted to him by the director of the Georgia Vocational Rehabilitation Agency;

(8) Two members shall be selected by the Governor from the general public;

(9) One member shall be appointed by the Governor from a list of three names submitted to him by the Georgia Nurses Association;

(10) One member shall be appointed by the Governor from a list of three names submitted to him by the Georgia Association of Pathologists;

(11) One member shall be appointed by the Governor from a list of three names submitted to him by the Georgia State Medical Association; and

(12) One member shall be appointed by the Governor from a list of three names submitted to him by the Georgia Pharmaceutical Association.

(c) The persons whose names are submitted to the Governor by the medical colleges, the hospitals, the Medical Association of Georgia, the Georgia State Medical Association, and the Georgia Association of Pathologists shall all be physicians licensed to practice medicine under the laws of Georgia, and the persons whose names are submitted by the Medical Association of Georgia and the Georgia State Medical Association shall all be actively engaged in the practice of medicine. The persons whose names are submitted to the Governor by the Georgia Nurses Association shall all be registered professional nurses licensed to practice nursing under the laws of Georgia. All persons whose names are submitted to the Governor by the Georgia Pharmaceutical Association shall be registered pharmacists licensed to practice pharmacy under the laws of Georgia.

(d) The Governor shall appoint the initial members for staggered terms as follows: three shall be appointed for terms to expire on December 31, 1977; three shall be appointed for terms to expire on December 31, 1978; three shall be appointed for terms to expire on December 31, 1979; and six shall be appointed for terms to expire on December 31, 1980. Thereafter, their successors shall be appointed for terms of four years, and until their successors are appointed and qualified, to begin on the expiration of the respective terms of office. In the event of a vacancy for any reason, the Governor shall fill said vacancy for the unexpired term in the same manner that other

appointments are made. Those initial members added to the committee in 1985 shall be appointed for initial terms beginning July 1, 1985, and expiring December 31, 1989, and upon the appointment and qualification of their respective successors. Thereafter, their successors shall be appointed for terms of four years and until their respective successors are appointed and qualified, such terms to begin on the expiration of the respective terms of office.

(e) The Cancer Advisory Committee shall meet as often as the commissioner deems necessary but not less than twice each year. (Code 1933, § 88-2503a, enacted by Ga. L. 1977, p. 753, § 1; Ga. L. 1982, p. 833, § 2; Ga. L. 1985, p. 1186, § 1; Ga. L. 2000, p. 1137, § 3; Ga. L. 2012, p. 303, § 3/HB 1146.)

The 2012 amendment, effective July 1, 2012, substituted “Georgia Vocational Rehabilitation Agency” for “Division of Re-

habilitation Services of the Department of Labor” in paragraph (b)(7).

31-15-4. Cancer control officer.

The commissioner shall appoint a cancer control officer. The cancer control officer shall be a physician licensed to practice medicine under Chapter 34 of Title 43 and shall be knowledgeable in the field of medicine covered by this chapter. He or she shall administer the cancer program for the Department of Public Health in compliance with this chapter. He or she shall be provided an office with clerical and administrative assistance to carry out this program. (Code 1933, § 88-2504a, enacted by Ga. L. 1977, p. 753, § 1; Ga. L. 2009, p. 453, § 1-39/HB 228; Ga. L. 2011, p. 705, § 6-1/HB 214.)

The 2011 amendment, effective July 1, 2011, substituted “Department of Public Health” for “Division of Public Health of the Department of Community Health” in the next-to-last sentence.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

31-15-5. Duties of commissioner.

The commissioner, with the advice of the Cancer Advisory Committee, shall:

(1) Develop standards for determining eligibility of patients for care and treatment under this program, set standards for the equipping and staffing of cancer clinics located strategically throughout the state and so placed that patients requiring treatment will not have to travel more than 75 miles to secure such treatment. When the clinics meet such standards, they shall be certified by the department. Patients treated at uncertified cancer clinics shall not be eligible for state aid for reimbursement;

(2) In the event that federal grant programs become available for patient care, the commissioner may allocate state matching funds in whatever department of state government they may be administered so as to maximize the total funds available and to obtain funding needed by the specific patient population which is declared eligible. These programs include but are not restricted to Medicaid, crippled children's services, and vocational rehabilitation;

(3) Extend financial aid to persons suffering from cancer to enable them to obtain the medical, nursing, pharmaceutical, and technical services necessary in caring for such disease. Criteria and procedures for financial aid will be developed by the Division of Physical Health in accordance with the principle that pauperization of a functional family unit will subvert the rehabilitative purposes of this program and will be more costly to the state in the long run;

(4) Assist in the development and expansion, by grant or by contract, of programs for the care and treatment of persons suffering from cancer so that the most efficient and effective treatment may be offered to the patients certified as eligible;

(5) Assist in the development of programs for the prevention of cancer;

(6) Assist in the development and execution of programs for the early detection of cancer, such as breast self-examination for breast cancer and the Papanicolaou test for cancer of the cervix;

(7) Institute and support, directly or through health organizations such as the American Cancer Society and the Georgia Cancer Management Network, educational programs for physicians, providers of health care, and the public concerning cancer, including the dissemination of information regarding prevention, early detection, and treatment; and

(8) Support a state-wide registry of all patients treated in certified cancer clinics in order to evaluate the nature and extent of the incidence of cancer and the effectiveness of treatment. (Code 1933, § 88-2505a, enacted by Ga. L. 1977, p. 753, § 1.)

31-15-6. Right to benefits under other programs.

Nothing in this chapter shall be construed to exclude patients with cancer from the benefits of any program of state or federal aid for which they might otherwise qualify. (Code 1933, § 88-2506a, enacted by Ga. L. 1977, p. 753, § 1.)

CHAPTER 15A

BONE MASS MEASUREMENT COVERAGE

Sec.

31-15A-1. Short title.

31-15A-2. Definitions.

31-15A-3. Insurance benefit plan shall

Sec.

provide coverage for bone mass measurement; education.

Editor's notes. — Ga. L. 1998, p. 877, § 1, not codified by the General Assembly, provides that: “(1) Osteoporosis affects 28 million Americans and each year results in 1.5 million fractures of the hip, spine, wrist, and other bones, costing the nation \$14 billion annually; (2) Osteoporosis progresses silently, in many cases undiagnosed until a fracture occurs, and once a fracture occurs, the disease is already advanced, and the likelihood is high that another fracture will occur; (3) One in two women and one in eight men 50 years of age and over will suffer a fracture due to osteoporosis; (4) Since osteoporosis progresses silently and currently has no cure, prevention, early diagnosis, and treatment are key to reducing the prevalence and devastation of this disease; (5) Medical experts agree that osteoporosis is preventable and treatable; however, once the disease progresses to the point of fracture, its associated consequences may lead to disability and institutionalization and may exact a heavy toll on quality of life; (6) Given the current focus on reducing unnecessary health care expenditures through the use of health promotion and disease prevention programs, it is cost

effective to make available coverage of services such as bone mass measurement, which will lead to early diagnosis, prevention of fracture, and timely treatment of osteoporosis; (7) Bone mass measurement is a reliable way to detect the presence of low bone mass and to ascertain the extent of bone loss to help assess the individual's risk for fracture, which aids in selecting appropriate therapies and interventions, while ordinary X-rays are not sensitive enough to detect osteoporosis until 25-40 percent of bone mass has been lost and the disease is advanced; (8) Current available technologies for measuring bone mass or bone loss include single and dual energy X-ray absorptiometry, computed tomography, radiographic absorptiometry, and biochemical markers, and other technologies for determining bone mass or bone loss are under investigation and may become scientifically proven technologies in the future; and (9) Scientifically proven technologies for detecting bone loss and other services related to the prevention, diagnosis, and treatment of osteoporosis can be used effectively to reduce the pain and financial burden that osteoporosis inflicts upon its victims.”

31-15A-1. Short title.

This chapter shall be known and may be cited as the “Bone Mass Measurement Coverage Act.” (Code 1981, § 31-15A-1, enacted by Ga. L. 1998, p. 877, § 2.)

31-15A-2. Definitions.

As used in this chapter, the term:

(1) “Accident and sickness insurance benefit plan, policy, or contract” has the meaning provided by paragraph (1) of subsection (a) of

Code Section 33-24-28.1, provided that such term shall not include a limited benefit insurance policy as defined in paragraph (4) of subsection (f) of Code Section 33-30-12.

(2) "Bone mass measurement" means a radiologic or radioisotopic procedure or other technologies approved by the United States Food and Drug Administration and performed on an individual for the purpose of identifying bone mass or detecting bone loss.

(3) "Qualified individual" means an:

(A) Estrogen-deficient woman or individual at clinical risk of osteoporosis as determined directly or indirectly by a physician and who is considering treatment;

(B) Individual with osteoporotic vertebral abnormalities;

(C) Individual receiving long-term glucocorticoid (steroid) therapy;

(D) Individual with primary hyperparathyroidism; or

(E) Individual being monitored directly or indirectly by a physician to assess the response to or efficacy of approved osteoporosis drug therapies. (Code 1981, § 31-15A-2, enacted by Ga. L. 1998, p. 877, § 2.)

31-15A-3. Insurance benefit plan shall provide coverage for bone mass measurement; education.

(a) Every group or individual accident or sickness insurance benefit plan, policy, or contract that provides hospital, medical, or surgical coverage that is issued, amended, delivered, or renewed in this state on or after July 1, 1998, shall make available as a part of the plan, policy, or contract or as an optional endorsement to the plan, policy, or contract coverage for qualified individuals for reimbursement for scientifically proven bone mass measurement (bone density testing) for the prevention, diagnosis, and treatment of osteoporosis.

(b) Every person or entity providing an accident or sickness insurance benefit plan, policy, or contract which is subject to the provisions of subsection (a) of this Code section shall identify and use scientifically accurate educational materials to increase patient awareness and knowledge of osteoporosis and encourage the prevention and treatment of osteoporosis. (Code 1981, § 31-15A-3, enacted by Ga. L. 1998, p. 877, § 2.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1998, commas were inserted preceding the phrase "or contract" in two places in subsection (a).

CHAPTER 16

**CARE AND TREATMENT OF CHRONIC RENAL
DISEASE PATIENTS**

Sec.		Sec.	
31-16-1.	Findings; declaration of purpose.	31-16-6.	Right to benefits under other programs.
31-16-2.	Establishment of program.	31-16-7.	Reuse of kidney dialyzer; limitation; authority; failure to comply.
31-16-3.	Functions of the Kidney Disease Advisory Committee; membership; terms of office; vacancies; compensation and reimbursement of expenses.	31-16-8.	Task force on kidney dialysis centers; establishment; membership; meetings; report; abolition [Repealed].
31-16-4.	Staff.		
31-16-5.	Duties of commissioner.		

31-16-1. Findings; declaration of purpose.

(a) It is declared and found that one of the most serious and tragic problems facing the public health and welfare is the death of hundreds of persons in this state every year from chronic renal disease, although the present state of medical arts and technology could return these persons to a socially productive life. Advances and discoveries in the treatment of patients suffering from chronic renal disease now allow not mere survival but rehabilitation of these patients to their normal occupations and activities. Presently, these patients are dying for lack of personal financial resources to pay for the expensive equipment and care which they need.

(b) The state recognizes its responsibilities to allow its citizens to keep their health without being pauperized and to use its resources and organization to aid in gathering and disseminating information on the treatment of chronic renal disease. It is believed that these programs will, by making treatment of chronic renal disease easily available, steadily lower the cost of such treatment. (Code 1933, § 88-3001, enacted by Ga. L. 1972, p. 708, § 1.)

31-16-2. Establishment of program.

The Department of Public Health shall establish a program for the prevention, control, and treatment of kidney disease which shall include the care of patients suffering from chronic kidney failure who require lifesaving therapy but are unable to pay for such services on a continuing basis. (Code 1933, § 88-3002, enacted by Ga. L. 1972, p. 708, § 1; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214.)

The 2011 amendment, effective July 1, 2011, substituted “Department of Public Health” for “Department of Community Health” at the beginning of this Code section.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

31-16-3. Functions of the Kidney Disease Advisory Committee; membership; terms of office; vacancies; compensation and reimbursement of expenses.

(a) The commissioner of public health shall appoint a Kidney Disease Advisory Committee, hereinafter referred to as KDAC, to advise the department in the administration of this chapter. The KDAC shall recommend priorities and relative budgets for the various purposes of this chapter as described below.

(b) The KDAC shall consist of 15 members appointed by the commissioner as follows:

(1) Four members shall be appointed by the commissioner from a list of eight names submitted to him by the presidents of the medical colleges located within Georgia, both public and private, and at least one such member shall be appointed from each of the medical colleges located within Georgia;

(2) Two members shall be appointed by the commissioner from a list of four names submitted to him by the chief executive officers of the hospitals located within Georgia which provide chronic dialysis and kidney transplantation services;

(3) One member shall be appointed by the commissioner from a list of two names submitted to him by the Medical Association of Georgia, and one member shall be appointed by the commissioner from a list of two names submitted to him by the Georgia State Medical Association;

(4) One member shall be appointed by the commissioner from a list of two names submitted to him by the Kidney Foundation of Georgia;

(5) One member shall be appointed by the commissioner from a list of two names submitted to him by the Georgia Claims Association and the Health Insurance Council;

(6) One member shall be appointed by the commissioner from a list of two names submitted to him by the director of the Georgia Vocational Rehabilitation Agency; and

(7) Four members shall be selected by the commissioner from the general public.

(c) The persons whose names are submitted to the commissioner by the medical colleges, the hospitals, the Medical Association of Georgia,

and the Georgia State Medical Association shall all be physicians licensed to practice medicine under the laws of Georgia, and the persons whose names are submitted by the Medical Association of Georgia shall be actively engaged in the practice of medicine.

(d) The commissioner shall appoint members for terms such that the terms of four members shall expire each year, except that every fourth year the terms of three members shall expire, in such manner that after the initial terms all members will serve for terms of four years and until their successors are elected and qualified. In making initial appointments, the commissioner shall adjust initial terms so as to achieve the staggered terms specified by the preceding sentence. In the event of a vacancy for any reason, the commissioner shall fill said vacancy for the unexpired term in the same manner that other appointments are made.

(e) The KDAC shall meet as often as the commissioner deems necessary but not less than twice each year. The members of the KDAC shall receive no compensation for their services but shall be reimbursed for actual and necessary expenses incurred by them in carrying out their duties as members thereof. (Code 1933, § 88-3003, enacted by Ga. L. 1972, p. 708, § 1; Ga. L. 1982, p. 833, § 2; Ga. L. 1985, p. 1413, § 1; Ga. L. 2000, p. 1137, § 3; Ga. L. 2009, p. 453, § 1-6/HB 228; Ga. L. 2011, p. 705, § 6-5/HB 214; Ga. L. 2012, p. 303, § 3/HB 1146.)

The 2011 amendment, effective July 1, 2011, substituted “commissioner of public health” for “commissioner of community health” in the first sentence of subsection (a).

The 2012 amendment, effective July 1, 2012, substituted “Georgia Vocational

Rehabilitation Agency” for “Division of Rehabilitation Services of the Department of Labor” in paragraph (b)(6).

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

31-16-4. Staff.

The commissioner shall provide staff to carry out administration of this program including, but not limited to, consultant physicians, administrative assistants, and clerical support. (Code 1981, § 31-16-4, enacted by Ga. L. 1985, p. 1413, § 1.)

Editor’s notes. — Ga. L. 1985, p. 1413, § 1, effective April 10, 1985, repealed the former version of this Code section, relating to the appointment of a kidney disease

control officer, and enacted the present Code section. The former Code section was based on Ga. L. 1972, p. 708, § 1.

31-16-5. Duties of commissioner.

The commissioner, with the advice of the KDAC, shall:

- (1) Develop standards for determining eligibility of patients for care and treatment under this program and set physical and medical

standards for the operation of dialysis and kidney transplantation centers. When such centers meet the standards, they shall be certified by the department. Patients treated at uncertified centers shall not be eligible for state aid for their treatment; and

(2) Extend financial aid to persons suffering from chronic renal diseases to enable them to obtain the medical, nursing, pharmaceutical, and technical services necessary in caring for such diseases, including the provision of home dialysis equipment or expenses in obtaining organs for transplantation, or both. Criteria and procedures for financial aid will be developed by the department. (Code 1933, § 88-3005, enacted by Ga. L. 1972, p. 708, § 1; Ga. L. 1985, p. 149, § 31; Ga. L. 1985, p. 1413, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 70A Am. Jur. 2d, Social Security and Medicare, §§ 450, 451.

31-16-6. Right to benefits under other programs.

Nothing in this chapter shall be construed to exclude patients with kidney disease from the benefits of any program of state or federal aid for which they might otherwise qualify. (Code 1933, § 88-3006, enacted by Ga. L. 1972, p. 708, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 70A Am. Jur. 2d, Social Security and Medicare, §§ 450, 451.

31-16-7. Reuse of kidney dialyzer; limitation; authority; failure to comply.

(a) The physician and that physician's patient retain the discretion to determine whether or not a kidney dialyzer should be reused. No licensed kidney dialysis clinic or provider of kidney dialysis services which is certificated by the state Department of Community Health may interfere with the exercise of that discretion by:

(1) Requiring the reuse of such dialyzer over the objection of that physician and patient; or

(2) Discriminating against a physician specializing in the practice of nephrology by prohibiting that physician from practicing in such clinic or performing dialysis services for such provider if that discrimination is based upon that physician's refusal to reuse a dialyzer and that refusal is based on the patient's informed consent.

31-16-7 TREATMENT OF CHRONIC RENAL DISEASE PATIENTS **31-16-8**

(b) A provider of kidney dialysis services who is required to comply with subsection (a) of this Code section but who does not so comply shall have no claim or cause of action for reimbursement for those services which were rendered without that compliance. (Code 1981, § 31-16-7, enacted by Ga. L. 1988, p. 1515, § 1; Ga. L. 1996, p. 6, § 31; Ga. L. 1999, p. 296, § 22.)

31-16-8. Task force on kidney dialysis centers; establishment; membership; meetings; report; abolition.

Repealed by Ga. L. 1988, p. 1515, § 2, effective December 31, 1988.

Editor's notes. — This Code section and was repealed by its own terms effective December 31, 1988.
was enacted by Ga. L. 1988, p. 1515, § 2,

CHAPTER 17

CONTROL OF VENEREAL DISEASE

Sec.		Sec.	
31-17-1.	Enumeration of diseases deemed dangerous to public health.	31-17-4.2.	HIV Pregnancy Screening.
31-17-2.	Report of diagnosis or treatment to health authorities.	31-17-5.	Prophylactic treatment at childbirth.
31-17-3.	Examination and treatment by health authorities.	31-17-6.	Regulation of laboratories.
31-17-4.	Serologic tests of pregnant women.	31-17-7.	Consent of minor to medical or surgical care or services; informing spouse, parent, custodian, or guardian.
31-17-4.1.	Chlamydia screening test.	31-17-8.	Penalty.

Administrative rules and regulations. — Reporting of venereal diseases, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Human Resources (now the Department of Community Health for these purposes), Public Health, Chapter 290-5-17.

Serologic test for syphilis for pregnant

women, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Human Resources, Public Health, Chapter 290-5-21.

Law reviews. — For note, “‘Rabbit’ Hunting in the Supreme Court: The Constitutionality of State Prohibitions of Sex Toy Sales Following *Lawrence v. Texas*,” see 44 Ga. L. Rev. 245 (2009).

OPINIONS OF THE ATTORNEY GENERAL

Screening of convicted prostitutes for HTLV-III/LAV (AIDS) virus. See 1986 Op. Att’y Gen. No. 86-19.

RESEARCH REFERENCES

ALR. — Compulsory examination for venereal disease, 22 ALR 1189.

Tort liability for infliction of venereal disease, 40 ALR4th 1089.

31-17-1. Enumeration of diseases deemed dangerous to public health.

Syphilis, gonorrhea, and chancroid, hereinafter referred to as venereal diseases, are declared to be contagious, infectious, communicable, and dangerous to the public health. (Ga. L. 1918, p. 275, § 1; Code 1933, § 88-501; Code 1933, § 88-1601, enacted by Ga. L. 1964, p. 499, § 1.)

JUDICIAL DECISIONS

Genital herpes. — Genital herpes is a contagious venereal disease even though it is not included in O.C.G.A. § 31-17-1. *Long v. Adams*, 175 Ga. App. 538, 333 S.E.2d 852 (1985).

Cited in *State v. Morrow*, 175 Ga. App. 743, 334 S.E.2d 344 (1985).

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Health, § 24.

C.J.S. — 39A C.J.S., Health and Environment, § 28 et seq.

ALR. — Constitutionality, construction,

and application of statutes, ordinances, and regulations concerning the prevention and cure of venereal diseases, 127 ALR 421.

31-17-2. Report of diagnosis or treatment to health authorities.

Any physician or other person who makes a diagnosis of or treats a case of venereal disease and any superintendent or manager of a hospital, dispensary, or charitable or penal institution in which there is discovered a case of venereal disease shall make report of such case to the health authorities in such form and manner as the Department of Public Health shall direct. (Ga. L. 1918, p. 275, § 2; Code 1933, § 88-502; Code 1933, § 88-1602, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214.)

The 2011 amendment, effective July 1, 2011, substituted “Department of Public Health” for “Department of Community Health” at the end of this Code section.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Health, § 25.

C.J.S. — 39A C.J.S., Health and Environment, § 28 et seq.

ALR. — Constitutionality, construction,

and application of statutes, ordinances, and regulations concerning the prevention and cure of venereal diseases, 127 ALR 421.

31-17-3. Examination and treatment by health authorities.

The authorized agent or agents of the Department of Public Health and county boards of health are directed and empowered, when in their judgment it is necessary to protect the public health, to make examination of persons infected or suspected of being infected with venereal disease; to require persons infected with venereal disease to report for treatment to a physician licensed to practice medicine under Chapter 34 of Title 43 and to continue treatment until cured, or to submit to treatment provided at public expense; and to isolate persons infected or

reasonably suspected of being infected with venereal disease. Law enforcement authorities of the jurisdiction wherein any such person so infected or suspected of being infected is located shall offer such assistance, including restraint and arrest, as shall be necessary to assure examination and treatment in accordance with this chapter. (Ga. L. 1918, p. 275, § 3; Code 1933, § 88-503; Code 1933, § 88-1604, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1996, p. 6, § 31; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214.)

The 2011 amendment, effective July 1, 2011, substituted “Department of Public Health” for “Department of Community Health” in the first sentence of this Code section.

Cross references. — Blood test re-

quirement for persons applying for marriage license, § 19-3-40.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

JUDICIAL DECISIONS

Cited in State v. Morrow, 175 Ga. App. 743, 334 S.E.2d 344 (1985).

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Habeas Corpus and Postconviction Remedies, § 70. 39 Am. Jur. 2d, Health, § 63.

C.J.S. — 16D C.J.S., Constitutional Law, § 1866. 39A C.J.S., Health and Environment, § 29 et seq.

ALR. — Constitutionality, construction, and application of statutes, ordinances, and regulations concerning the prevention and cure of venereal diseases, 127 ALR 421.

31-17-4. Serologic tests of pregnant women.

The department may require every pregnant woman to submit to a standard serologic test, as defined by the department, and may require any person attending or giving prenatal care to such woman to take or cause to be taken a blood specimen for use in such test. Such specimens shall be submitted for laboratory testing in the manner prescribed by the department; and all laboratories conducting such tests shall comply with the rules, regulations, and reporting requirements prescribed therefor by the department. (Ga. L. 1943, p. 599, §§ 1, 2; Code 1933, § 88-1606, enacted by Ga. L. 1964, p. 499, § 1.)

Administrative rules and regulations. — Serologic test for syphilis for pregnant women, Official Compilation of the Rules and Regulations of the State of

Georgia, Department of Human Resources (now the Department of Community Health for these purposes), Public Health, Chapter 290-5-21.

RESEARCH REFERENCES

C.J.S. — 39A C.J.S., Health and Environment, § 28 et seq.

ALR. — Constitutionality, construction, and application of statutes, ordinances,

and regulations concerning the prevention and cure of venereal diseases, 127 ALR 421.

31-17-4.1. Chlamydia screening test.

(a) As used in this Code section, the term:

(1) “Chlamydia screening test” means any laboratory test of the urogenital tract which specifically detects for infection by one or more agents of chlamydia trachomatis and which test is approved for such purposes by the federal Food and Drug Administration.

(2) “Policy” means any benefit plan, contract, or policy except a disability income policy, specified disease policy, or hospital indemnity policy.

(b)(1) Every insurer authorized to issue an individual or group accident and sickness insurance policy in this state which includes coverage for any female shall include as part of or as a required endorsement to each such policy which is issued, delivered, issued for delivery, or renewed on or after July 1, 1998, coverage for one annual chlamydia screening test for those covered females who are not more than 29 years old.

(2) The coverage required under paragraph (1) of this subsection may be subject to such exclusions, reductions, or other limitations as to coverages, deductibles, or coinsurance provisions as may be approved by the Commissioner of Insurance.

(3) Nothing in this subsection shall be construed to prohibit the issuance of accident and sickness insurance policies which provide benefits greater than or more favorable to the insured than those required by paragraph (1) of this subsection.

(4) The provisions of subsection (b) of this Code section shall apply to accident and sickness insurance policies issued by a fraternal benefit society, a nonprofit hospital service corporation, a nonprofit medical service corporation, a health care plan, a health maintenance organization, or any similar entity.

(5) Nothing contained in this Code section shall be deemed to prohibit the payment of different levels of benefits or having differences in coinsurance percentages applicable to benefit levels for services provided by preferred and nonpreferred providers as otherwise authorized under the provisions of Article 2 of Chapter 30 of Title 33, relating to preferred provider arrangements.

(c)(1) A contract executed or renewed on or after July 1, 1998, which provides for financing and delivery of health care services through a managed care plan, other than a dental plan, shall provide coverage for one annual chlamydia screening test for each female who is covered under such contract and who is not more than 29 years of age. Such coverage may be subject to such exclusions, reductions, or other limitations as to coverages, deductibles, or copayment provisions as may be approved by the Commissioner of Insurance.

(2) Nothing in this subsection shall be construed to prohibit any managed care plan contract from providing benefits greater than or more favorable to the covered females than those required by paragraph (1) of this subsection.

(d) Code Section 31-17-8 shall not apply to this Code section.

(e) This Code section shall be subject to rules and regulations which shall be promulgated by the Commissioner of Insurance regarding notice and enforcement. (Code 1981, § 31-17-4.1, enacted by Ga. L. 1998, p. 867, § 2.)

Editor's notes. — Ga. L. 1998, p. 867, § 1, not codified by the General Assembly, provides that: "The General Assembly finds that chlamydia is a sexually transmitted disease which may cause serious complications in persons infected with it, including pelvic inflammatory disease, infertility, and ectopic pregnancy. Pregnant women infected with chlamydia may suffer from symptoms such as stillbirths, low birth weight babies, and other serious physical and mental complications for their infants. Chlamydia is often asymptomatic in women and cannot be detected except with special, though inexpensive, screening tests. Cure of chlamydia is usually both easy and inexpensive. The Gen-

eral Assembly further finds that requiring health care insurance and managed care plan coverage of annual chlamydia screening tests for females in the age group most likely to be infected with chlamydia will encourage the testing and treatment needed to detect and cure this destructive disease and result in a marked improvement in the general health of the citizens of this state and the savings of both public and private moneys being spent to deal with the serious consequences of this disease."

Law reviews. — For review of 1998 legislation relating to health, see 15 Ga. St. U.L. Rev. 130 (1998).

31-17-4.2. HIV Pregnancy Screening.

(a) This Code section shall be known and may be cited as the "Georgia HIV Pregnancy Screening Act of 2007."

(b) Every physician and health care provider who assumes responsibility for the prenatal care of pregnant women during gestation and at delivery shall be required to test pregnant women for HIV except in cases where the woman refuses the testing.

(c) If at the time of delivery there is no written evidence that an HIV test has been performed, the physician or other health care provider in attendance at the delivery shall order that a sample of the woman's

blood be taken or a rapid oral test administered at the time of the delivery except in cases where the woman refuses the testing.

(d) The woman shall be informed of the test to be conducted and her right to refuse. A pregnant woman shall submit to an HIV test pursuant to this Code section unless she specifically declines. If the woman tests positive, counseling services provided by the Department of Public Health shall be made available to her and she shall be referred to appropriate medical care providers for herself and her child.

(e) If for any reason the pregnant woman is not tested for HIV, that fact shall be recorded in the patient's records, which, if based upon the refusal of the patient, shall relieve the physician or other health care provider of any other responsibility under this Code section.

(f) The Department of Public Health shall be authorized to promulgate rules and regulations for the purpose of administering the requirements under this Code section. (Code 1981, § 31-17-4.2, enacted by Ga. L. 2007, p. 173, § 1/ HB 429; Ga. L. 2009, p. 453, § 1-4/ HB 228; Ga. L. 2011, p. 705, § 6-3/ HB 214.)

The 2011 amendment, effective July 1, 2011, substituted "Department of Public Health" for "Department of Community Health" in the third sentence of subsection (d), and in subsection (f).

Cross references. — Control of HIV, T.

31, C. 17A. HIV tests, generally, § 31-22-9.2.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

31-17-5. Prophylactic treatment at childbirth.

It shall be the duty of any person who shall be in attendance on any childbirth to apply to the child such prophylactic treatment as may be prescribed by the department to prevent blindness from gonococcus infection and otherwise to comply with such rules, regulations, and reporting requirements as shall be prescribed by the department. (Code 1933, § 88-1605, enacted by Ga. L. 1964, p. 499, § 1.)

Administrative rules and regulations. — Prophylactic treatment of the eyes of the newborn, Official Compilation of the Rules and Regulations of the State

of Georgia, Department of Human Resources (now Department of Community Health for these purposes), Public Health, Chapter 290-5-20.

RESEARCH REFERENCES

ALR. — Constitutionality, construction, and application of statutes, ordinances, and regulations concerning the preven-

tion and cure of venereal diseases, 127 ALR 421.

31-17-6. Regulation of laboratories.

All laboratories conducting tests for venereal diseases shall comply with the rules, regulations, and reporting requirements prescribed therefor by the department. (Code 1933, § 88-1603, enacted by Ga. L. 1964, p. 499, § 1.)

RESEARCH REFERENCES

C.J.S. — 39A C.J.S., Health and Environment, §§ 28 et seq., 46.

31-17-7. Consent of minor to medical or surgical care or services; informing spouse, parent, custodian, or guardian.

(a) The consent to the provision of medical or surgical care or services by a hospital or public clinic or to the performance of medical or surgical care or services by a physician licensed to practice medicine and surgery, when such consent is given by a minor who is or professes to be afflicted with a venereal disease, shall be as valid and binding as if the minor had achieved his majority, provided that any such treatment shall involve procedures and therapy related to conditions or illnesses arising out of the venereal disease which gave rise to the consent authorized under this Code section. Any such consent shall not be subject to later disaffirmation by reason of minority. The consent of no other person or persons, including but not limited to a spouse, parent, custodian, or guardian, shall be necessary in order to authorize the provision to such minor of such medical or surgical care or services as are described in this subsection.

(b) Upon the advice and direction of a treating physician or, if more than one, of any one of them, a member of the medical staff of a hospital or public clinic or a physician licensed to practice medicine and surgery may, but shall not be obligated to, inform the spouse, parent, custodian, or guardian of any such minor as to the treatment given or needed. Such information may be given to or withheld from the spouse, parent, custodian, or guardian without the consent of the minor patient and even over the express refusal of the minor patient to the providing of such information. (Ga. L. 1971, p. 337, §§ 2, 3.)

Cross references. — Consent for surgical or medical treatment generally, T. 31, C. 9.

RESEARCH REFERENCES

Am. Jur. 2d. — 59 Am. Jur. 2d, Parent and Child, § 71.

31-17-8. Penalty.

Any person who violates any provision of this chapter or any rule or regulation promulgated under this chapter shall be guilty of a misdemeanor. (Code 1933, § 88-1607, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1985, p. 149, § 31.)

RESEARCH REFERENCES

ALR. — Constitutionality, construction, and application of statutes, ordinances, and regulations concerning the prevention and cure of venereal diseases, 127 ALR 421.

CHAPTER 17A

CONTROL OF HIV

Sec.

31-17A-1. HIV deemed dangerous to public health.

31-17A-2. Examination of infected persons; administration of HIV test.

Sec.

31-17A-3. Refusal to consent to test; procedure.

Cross references. — Disposition of child committing delinquent act constituting AIDS transmitting crime, § 15-11-66.1. AIDS transmitting crimes and required reporting, § 17-10-15. Confidential nature of AIDS information, § 24-9-40.1. Disclosure of AIDS confidential information, § 24-9-47. Methods for selection of blood donors and collection of blood, § 31-22-5. HIV tests, §§ 31-22-9.1, 31-22-9.2.

Editor's notes. — Ga. L. 1988, p. 1799, § 1, not codified by the General Assembly, provides: "The General Assembly finds that Acquired Immunodeficiency Syndrome (AIDS) and its causative agent, including Human Immunodeficiency Virus (HIV), pose a grave threat to the health, safety, and welfare of the people of this state. In the absence of any effective vaccination or treatment for this disease, it threatens almost certain death to all who contract it. The disease is largely transmitted through sexual contacts and intravenous drug use, not through casual contact, and, while deadly, is therefore preventable. The key component of the fight against AIDS is education. Through public education and counseling our citi-

zens can learn how the disease is transmitted and, thus, how to protect themselves and prevent its spread. The Department of Human Resources is encouraged to continue its efforts to educate all Georgians about the disease, its causative agent, and its means of transmission. In addition, voluntary testing should be encouraged for anyone who feels at risk of infection. While education, counseling, and voluntary testing are vital to the elimination of this epidemic, other measures are needed to protect the health of our citizens, and it is the intention of the General Assembly to enact such measures in the exercise of its police powers in order to deal with AIDS and HIV infection."

Administrative rules and regulations. — Acquired immunodeficiency syndrome, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Human Resources (now the Department of Community Health for these purposes), Public Health, Chapter 290-5-48.

Law reviews. — For note, "Rabbit Hunting in the Supreme Court: The Constitutionality of State Prohibitions of Sex Toy Sales Following *Lawrence v. Texas*," see 44 Ga. L. Rev. 245 (2009).

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Health, § 63.

C.J.S. — 39A C.J.S., Health and Environment, § 28 et seq.

31-17A-1. HIV deemed dangerous to public health.

(a) Any term used in this chapter and defined in Code Section 31-22-9.1 shall have the meaning provided for such term in Code Section 31-22-9.1.

(b) HIV and the degenerative diseases associated with it are declared to be contagious, infectious, communicable, and extremely dangerous to the public health. (Code 1981, § 31-17A-1, enacted by Ga. L. 1988, p. 1799, § 7.)

31-17A-2. Examination of infected persons; administration of HIV test.

The authorized agent or agents of the Department of Public Health are directed and empowered, when in their judgment it is necessary to protect the public health, to make examinations of persons infected or suspected of being infected with HIV and to administer an HIV test with the consent of the person being tested. In the event the person infected or suspected of being infected with HIV refuses to consent to the administration of an HIV test, the authorized agent or agents of the Department of Public Health are authorized to petition the court for an order authorizing the administration of an HIV test pursuant to the procedure set forth in Code Section 31-17A-3. (Code 1981, § 31-17A-2, enacted by Ga. L. 1988, p. 1799, § 7; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214.)

The 2011 amendment, effective July 1, 2011, substituted “Department of Public Health” for “Department of Community Health” twice in this Code section.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

RESEARCH REFERENCES

ALR. — Damage action for HIV testing without consent of person tested, 77 ALR5th 541.

31-17A-3. Refusal to consent to test; procedure.

(a) If a person refuses to consent to an HIV test, as provided in Code Section 31-17A-2, the Department of Public Health may file a civil complaint with the superior court of the county of the residence of the person refusing the test. The complaint shall allege with specificity the basis for the allegations which the department believes support the conclusion that the person is infected with HIV, as well as the scope, nature, and threat to the public health created thereby, and the proposed plan to be adopted to protect the public health in the event the

court orders the administration of the HIV test and the person is found to be an HIV infected person. The person against whom the complaint is filed shall be represented by counsel, and, in the event the person against whom the complaint is filed cannot afford counsel, counsel shall be appointed by the court.

(b) The superior court shall hear the complaint on an expedited basis without a jury. All proceedings before the court shall be sealed.

(c) If after consideration of the evidence, the court finds clear and convincing evidence that the person is reasonably likely to be infected with HIV and that there is a compelling need to protect the public health, the court may order the person to submit to an HIV test, shall retain jurisdiction to render such orders as are appropriate to effectuate that order, and, in the event the person so tested is determined to be infected with HIV, to require such procedures to protect the public health consistent with the least restrictive alternative which is available within the limits of state funds specifically appropriated therefor. (Code 1981, § 31-17A-3, enacted by Ga. L. 1988, p. 1799, § 7; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214.)

The 2011 amendment, effective July 1, 2011, substituted “Department of Public Health” for “Department of Community Health” in the first sentence of subsection (a).

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

CHAPTER 18

REGISTRY FOR TRAUMATIC BRAIN AND SPINAL
CORD INJURIES

Sec.		Sec.	
31-18-1.	Declaration of policy.	31-18-3.	Reporting procedures.
31-18-2.	Definitions.	31-18-4.	Duties of commission.

Cross references. — Brain and Spinal Injury Trust Fund, Ga. Const. 1983, Art. III, Sec. IX, Para. VI(k).

Administrative rules and regulations. — Traumatic brain injury facilities, Official Compilation of the Rules and Reg-

ulations of the State of Georgia, Department of Human Resources (now the Department of Community Health for these purposes), Public Health, Chapter 290-5-53.

RESEARCH REFERENCES

Am. Jur. Proof of Facts. — Carbon Monoxide Brain Damage, 22 POF2d 135.

Brain Injuries Due to Trauma, 30 POF2d 95.

Proof of Paralysis, 67 POF3d 1.

Traumatic Brain Injuries, 72 POF3d 363.

31-18-1. Declaration of policy.

It is the intent of the General Assembly to create a state-wide central registry for traumatic brain and spinal cord injuries to ensure the registration of all persons with traumatic brain or spinal cord injuries in order that all such persons might obtain information about rehabilitative, independent living, and other services or goods provided by existing state agencies, departments, other organizations, and individuals. (Code 1933, § 88-3401, enacted by Ga. L. 1980, p. 1245, § 1; Ga. L. 1985, p. 871, § 1; Ga. L. 1986, p. 10, § 31; Ga. L. 2006, p. 175, § 1/SB 208.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2006, “central registry for traumatic brain and spinal

cord injuries” was substituted for “Central Registry for Traumatic Brain and Spinal Injuries”.

31-18-2. Definitions.

As used in this chapter, the term:

- (1) “Brain injury” means a traumatic injury to the brain (cranio-cerebral head trauma), not of a degenerative or congenital nature, but arising from blunt or penetrating trauma or from acceleration-deceleration forces, that is associated with any of these symptoms or signs attributed to the injury: decreased level of

consciousness, amnesia, other neurologic or neuropsychologic abnormalities, skull fracture, or diagnosed intracranial lesions. These impairments may be either temporary or permanent and can result in a partial or total functional disability.

(2) "Spinal cord injury" means a traumatic injury to the spinal cord, not of a degenerative or congenital nature, but arising from blunt or penetrating trauma or from acceleration-deceleration forces, resulting in paraplegia or quadriplegia, which can be a partial or total loss of physical function. (Code 1933, § 88-3402, enacted by Ga. L. 1980, p. 1245, § 1; Ga. L. 1985, p. 871, § 1; Ga. L. 2006, p. 175, § 1/SB 208.)

31-18-3. Reporting procedures.

Every public and private health and social agency, every hospital or facility that has a valid permit or provisional permit issued by the Department of Community Health under Chapter 7 of this title, and every physician licensed to practice medicine in this state, if such physician has not otherwise reported such information to another agency, hospital, and facility, shall report to the Brain and Spinal Injury Trust Fund Commission such information concerning the identity of the person such agency, hospital, facility, or physician has identified as having a traumatic brain or spinal cord injury as defined in this chapter. The report shall be made within 45 days after identification of the person with the traumatic brain or spinal cord injury. The report shall contain the name, age, address, type and extent of injury, and such other information concerning the person with the injury as the Brain and Spinal Injury Trust Fund Commission, which is administratively assigned to the department, may require. (Code 1933, § 88-3403, enacted by Ga. L. 1980, p. 1245, § 1; Ga. L. 1981, p. 1027, § 1; Ga. L. 1985, p. 871, § 1; Ga. L. 2004, p. 1107, § 1; Ga. L. 2006, p. 175, § 1/SB 208; Ga. L. 2008, p. 12, § 2-29/SB 433.)

31-18-4. Duties of commission.

(a) The Brain and Spinal Injury Trust Fund Commission, which is administratively assigned to the Department of Public Health, shall establish procedures whereby a person with a traumatic brain or spinal cord injury for whom a report is made pursuant to this chapter shall be informed of appropriate agencies, departments, hospitals, facilities, organizations, or individuals providing rehabilitative, independent living, and other services or goods.

(b) The Brain and Spinal Injury Trust Fund Commission shall maintain records of reports and notifications made under this chapter. The Brain and Spinal Injury Trust Fund Commission shall produce an

annual report relating to information and data collected pursuant to this chapter and shall make such report available upon request.

(c) Statistical information collected under this chapter shall be available to any other federal or state agency or private organization concerned with traumatic brain or spinal cord injuries, but no names or addresses will be provided without the consent of the person with the traumatic brain or spinal cord injury or the consent of the immediate family or guardian of such person if that person is unable to consent. (Code 1933, § 88-3404, enacted by Ga. L. 1980, p. 1245, § 1; Ga. L. 1981, p. 1027, § 2; Ga. L. 1982, p. 833, § 2; Ga. L. 1985, p. 149, § 31; Ga. L. 1985, p. 871, § 1; Ga. L. 2000, p. 1137, § 3; Ga. L. 2004, p. 1107, § 2; Ga. L. 2006, p. 175, § 1/SB 208; Ga. L. 2009, p. 8, § 31/SB 46; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214.)

The 2011 amendment, effective July 1, 2011, substituted “Department of Public Health” for “Department of Community Health” in subsection (a).

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

CHAPTER 19

CONTROL OF RABIES

Sec.		Sec.	
31-19-1.	Responsibility for control.	31-19-6.	Certificates of inoculation; tags [Repealed].
31-19-2.	Powers of department in infected area.	31-19-7.	County rabies control officer.
31-19-3.	Licensing and regulation of animals by local authorities.	31-19-8.	Joint administration of chapter by adjoining counties.
31-19-4.	Duty of notification.	31-19-9.	Applicability to municipalities with rabies control laws.
31-19-5.	Inoculation of canines and felines against rabies.	31-19-10.	Penalty.

Administrative rules and regulations. — Control of rabies, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Hu-

man Resources (now Department of Human Services), Public Health, Chapter 290-5-2.

OPINIONS OF THE ATTORNEY GENERAL

Control of rabies generally is delegated to county boards of health and control of dangerous drugs is vested with State Board of Pharmacy and state drug inspector (now director of Georgia Drugs and Narcotics Agency). 1975 Op. Att'y Gen. No. 75-23.

Expense of confining animals exhibiting signs of rabies included in county board's budget. — Local county boards of health should prescribe rules for prevention and control of rabies by providing for vaccination, tagging, and certification of dogs, and for confinement of any

animal which exhibits any signs of rabies; cost of such confinement would be an expense of county board of health to be included in the board's budget which is submitted to local taxing authorities under provisions of Ga. L. 1964, p. 499, § 1. 1965-66 Op. Att'y Gen. No. 65-21.

Responsibility of county boards of health regarding strays and unwanted dogs. — Local county boards of health should adopt rules and regulations relative to catching and impounding of strays and unwanted dogs. 1965-66 Op. Att'y Gen. No. 65-21.

RESEARCH REFERENCES

C.J.S. — 3B C.J.S., Animals, § 128.
ALR. — Liability for injuries inflicted by rabid dog, 13 ALR 492.
 Constitutionality of "dog laws," 49 ALR 847.

Right to and measure of compensation for animals or trees destroyed to prevent spread of disease or infection, 67 ALR 208.
 Liability for injuries caused by cat, 68 ALR4th 823.

31-19-1. Responsibility for control.

Each county board of health shall have primary responsibility for the control of rabies within its jurisdiction. Such boards, in addition to their other powers, are empowered and required to adopt and promulgate rules and regulations for the prevention and control of such disease.

(Ga. L. 1945, p. 448, § 2; Code 1933, § 88-1501, enacted by Ga. L. 1964, p. 499, § 1.)

OPINIONS OF THE ATTORNEY GENERAL

Expense of confining animals exhibiting signs of rabies included in county board's budget. — Local county boards of health should prescribe rules for prevention and control of rabies by providing for vaccination, tagging, and certification of dogs, and for confinement of any animal which exhibits any signs of rabies; cost of such confinement would be an expense of county board of health to be included in the board's budget which is

submitted to local taxing authorities under provisions of Ga. L. 1964, p. 499, § 1. 1965-66 Op. Att'y Gen. No. 65-21.

Responsibility of county boards of health regarding strays and unwanted dogs. — Local county boards of health should adopt rules and regulations relative to catching and impounding of strays and unwanted dogs. 1965-66 Op. Att'y Gen. No. 65-21.

RESEARCH REFERENCES

C.J.S. — 39A C.J.S., Health and Environment, § 32 et seq.

31-19-2. Powers of department in infected area.

The department may declare any county or any area therein or any group of counties or areas therein where rabies exists to be an infected area and may provide for immunization and such other measures as shall be indicated for the prevention and control of the disease. (Code 1933, § 88-1502, enacted by Ga. L. 1964, p. 499, § 1.)

RESEARCH REFERENCES

C.J.S. — 39A C.J.S., Health and Environment, § 35.

31-19-3. Licensing and regulation of animals by local authorities.

The governing authorities of each county and municipality are authorized and required, in the control of rabies, to require regulation or licensing of animals. (Code 1933, § 88-1503, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1969, p. 834, § 2.)

RESEARCH REFERENCES

Am. Jur. 2d. — 4 Am. Jur. 2d, Animals, §§ 17, 19, 21, 36.

C.J.S. — 3B C.J.S., Animals, § 12 et seq.

31-19-4. Duty of notification.

It shall be the duty of any person bitten by any animal reasonably suspected of being rabid immediately to notify the appropriate county board of health. It shall be the duty of the owner, custodian, or person having possession and knowledge of any animal which has bitten any person or animal or of any animal which exhibits any signs of rabies to notify the appropriate county board of health and to confine such animal in accordance with rules and regulations of the county board of health. (Ga. L. 1945, p. 448, § 10; Code 1933, § 88-1504, enacted by Ga. L. 1964, p. 499, § 1.)

31-19-5. Inoculation of canines and felines against rabies.

The county boards of health are empowered and required to adopt and promulgate rules and regulations requiring canines and felines to be inoculated against rabies and to prescribe the intervals and means of inoculation, the fees to be paid in county sponsored clinics, that procedures be in compliance with the recommendations of the National Association of State Public Health Veterinarians for identifying inoculated canines and felines, and all other procedures applicable thereto. As used in this chapter, the term "inoculation against rabies" means the administering by a licensed veterinarian of antirabies vaccine approved by the department. (Ga. L. 1945, p. 448, § 3; Code 1933, § 88-1505, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1969, p. 834, § 3; Ga. L. 1992, p. 2089, § 1.)

RESEARCH REFERENCES

C.J.S. — 39A C.J.S., Health and Environment, § 32 et seq.

31-19-6. Certificates of inoculation; tags.

Reserved. Repealed by Ga. L. 1992, p. 2089, § 2, effective July 1, 1992.

Editor's notes. — This Code section Code 1933, § 88-1506, enacted by Ga. L. was based on Ga. L. 1945, p. 448, § 4; 1964, p. 499, § 1; Ga. L. 1969, p. 834, § 4.

31-19-7. County rabies control officer.

(a) The county board of health shall appoint a person who is knowledgeable of animals to be the county rabies control officer. It shall be the duty of the county rabies control officer to enforce this chapter and other laws which regulate the activities of dogs.

(b) The county governing authority of each county is authorized to levy a fee not to exceed 50¢ for each dog, such fee to be collected by the

veterinarian administering the antirabies vaccine required by this chapter. This fee shall be in addition to that provided for in Code Section 31-19-5. If any county has no resident veterinarian, the out-of-county veterinarian administering the antirabies vaccine and collecting the fee provided for by this Code section shall forward to the treasurer of the county of the dog owner's residence the fee prescribed by that county's governing authority.

(c) The fees collected under this Code section shall be used to help in paying the salary of the county rabies control officer. (Code 1933, § 88-1506.1, enacted by Ga. L. 1969, p. 834, § 5; Ga. L. 1982, p. 3, § 31.)

RESEARCH REFERENCES

C.J.S. — 39A C.J.S., Health and Environment, § 70 et seq.

31-19-8. Joint administration of chapter by adjoining counties.

The governing authority of each county may devise and implement plans whereby this chapter, as amended, is administered jointly with one or more adjoining counties. (Code 1933, § 88-1506.2, enacted by Ga. L. 1969, p. 834, § 6.)

31-19-9. Applicability to municipalities with rabies control laws.

This chapter shall not apply to municipalities which already have a rabies control law unless and until such law is repealed. (Ga. L. 1945, p. 448, § 13; Ga. L. 1969, p. 834, § 7.)

31-19-10. Penalty.

Any person who violates any provision of this chapter or any rule or regulation adopted pursuant thereto shall be guilty of a misdemeanor. (Ga. L. 1945, p. 448, § 11; Code 1933, § 88-1507, enacted by Ga. L. 1964, p. 499, § 1.)

RESEARCH REFERENCES

C.J.S. — 3B C.J.S., Animals, §§ 171 et seq., 179 et seq.

CHAPTER 20

PERFORMANCE OF STERILIZATION PROCEDURES

Sec.		Sec.	
31-20-1.	Definitions.	31-20-5.	Civil and criminal liability; compliance where other medical treatment may result in sterilization.
31-20-2.	Performance of sterilization procedure upon request.	31-20-6.	Exemptions from requirements of chapter.
31-20-3.	Sterilization of mentally incompetent persons.		
31-20-4.	Restriction on performance of sterilization procedure.		

JUDICIAL DECISIONS

Cited in *Leagan v. Levine*, 158 Ga. App. 293, 279 S.E.2d 741 (1981).

31-20-1. Definitions.

As used in this chapter, the term:

(1) "Accredited hospital" means a hospital licensed by the Department of Community Health and accredited by a nationally recognized health care accreditation body.

(2) "Physician" means a person duly licensed to practice medicine and surgery without restriction in Georgia pursuant to Chapter 34 of Title 43.

(3) "Sterilization procedure" means any procedure which is designed or intended to prevent conception and which is not designed to unsex the patient by removing the ovaries or testicles. (Ga. L. 1966, p. 453, § 3; Ga. L. 1970, p. 683, § 4; Ga. L. 1982, p. 3, § 31; Ga. L. 2008, p. 12, § 2-30/SB 433; Ga. L. 2012, p. 337, § 7/SB 361.)

The 2012 amendment, effective July 1, 2012, substituted "a nationally recognized health care accreditation body" for

"the Joint Commission on the Accreditation of Hospitals" in paragraph (1).

JUDICIAL DECISIONS

Procedure not designed to prevent conception not within ambit of law. — If surgical procedure involved was not designed or intended to prevent concep-

tion, it was not a surgical procedure within regulatory ambit of Ga. L. 1966, p. 453. *Winfrey v. Citizens & S. Nat'l Bank*, 149 Ga. App. 488, 254 S.E.2d 725 (1979).

RESEARCH REFERENCES

Am. Jur. 2d. — 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers, § 262.

C.J.S. — 39A C.J.S., Health and Environment, § 76.

31-20-2. Performance of sterilization procedure upon request.

It shall be lawful for any physician to perform a sterilization procedure upon a person 18 years of age or over, or less than 18 years of age if legally married, provided that a request in writing is made by such person and provided, further, that prior to or at the time of such request a full and reasonable medical explanation is given by such physician to such person as to the meaning and consequence of such operation. (Ga. L. 1966, p. 453, § 2; Ga. L. 1970, p. 683, § 2; Ga. L. 1990, p. 325, § 1.)

Law reviews. — For note on 1990 amendment of this Code section, see 7 Ga. St. U.L. Rev. 309 (1990).

JUDICIAL DECISIONS

Physician need not disclose risks of sterilization procedure. — Language “full and reasonable medical explanation ... as to the meaning and consequence of such operation” means that the physician must fully inform the patient of the intended results of sterilization, which is the permanent inability to have children, but does not mean that a physician must disclose the possible risks and complications of the sterilization procedure. *Robinson v. Parrish*, 251 Ga. 496, 306 S.E.2d 922 (1983).

O.C.G.A. § 31-20-2 does not require a physician to disclose possible risks and complications of a sterilization procedure. *Robinson v. Parrish*, 720 F.2d 1548 (11th Cir. 1983).

O.C.G.A. § 31-20-2 did not require a physician to inform a patient of the risk of chronic testicular pain, and failure to do so did not vitiate the plaintiff’s written request. *Ariemma v. Perlow*, 223 Ga. App. 360, 477 S.E.2d 590 (1996).

Medical explanation required. — O.C.G.A. § 31-20-2 requires that a full and reasonable medical explanation be given by the physician to the patient as to the method to be employed in a sterilization operation and is not satisfied when the physician merely informs the patient that the intended result of the operation would be to render the patient permanently incapable of having children; the patient must understand how his or her inability to have children will result. *Dohn v. Lovell*, 187 Ga. App. 523, 370 S.E.2d 789, cert. denied, 187 Ga. App. 907, 370 S.E.2d 789 (1988).

After a patient requested her tubes be “cut and tied,” whether her request was a generic request for sterilization rather than a request for a specific method of sterilization was a question of fact as to whether she was given a “full and reasonable medical explanation.” *Gowen v. Carpenter*, 189 Ga. App. 477, 376 S.E.2d 384 (1988).

RESEARCH REFERENCES

Am. Jur. 2d. — 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers, § 262.

C.J.S. — 16A C.J.S., Constitutional Law, §§ 670, 671, 1041. 39A C.J.S., Health and Environment, § 76.

ALR. — Legality of voluntary nontherapeutic sterilization, 35 ALR3d 1444.

31-20-3. Sterilization of mentally incompetent persons.

(a) **Declaration of policy.** The General Assembly finds that the present laws of this state provide no means for the performance of sterilization procedures upon persons who, because of a developmental disability, brain damage, or both, are irreversibly and incurably mentally incompetent to the degree that such persons, with or without economic aid (charitable or otherwise) from others, could not provide care and support for any children procreated by them in such a way that such children could reasonably be expected to survive to the age of 18 years without suffering or sustaining serious mental or physical harm.

(b) **Definitions.** As used in this Code section, the term “person subject to this Code section” means a person who, because of a developmental disability, brain damage, or both, is irreversibly and incurably mentally incompetent to the degree that such person, with or without economic aid (charitable or otherwise) from others, could not provide care and support for any children procreated by such person in such a way that such children could reasonably be expected to survive to the age of 18 years without suffering or sustaining serious mental or physical harm, when there has been, according to the procedures of this Code section as hereinafter stated, the required finding that the condition of such person is irreversible and incurable.

(c) **Prerequisites to performing a sterilization procedure on a person subject to this Code section.** A sterilization procedure may be performed by a physician on a person subject to this Code section pursuant to subsection (d) of this Code section only after satisfaction of all of the following conditions precedent:

(1) A petition shall be filed by one or more of the parents or legal guardian or next of kin of the person alleged to be subject to this Code section stating the reasons why such person is alleged to be subject to this Code section and containing the written consent of the parent or parents not filing the petition, if such parents are surviving, can be found after reasonable effort, and are mentally competent. If no such parent or parents survive or can be found after reasonable effort or if such parent or parents are mentally incompetent, the petition shall contain the written consent of a guardian ad litem who shall be appointed by the probate court and who shall make investigation and

report to such court before the hearing shall commence, provided that such guardian ad litem shall be a duly qualified and licensed member of the State Bar of Georgia. The written consent of any parent shall not be required if such parent has not within six months of the date of filing of the petition provided any support or maintenance to the person alleged to be subject to this Code section and such parent does not reside within the same household as such person;

(2) The judge of the probate court shall appoint an examining team composed of a psychologist or psychiatrist qualified in the area of developmental disabilities and brain damage and one physician, neither of whom is the physician who proposes to perform the sterilization procedure on the person alleged to be subject to this Code section and neither of whom is a member of the committee of the accredited hospital described in paragraph (3) of this subsection. Said persons so appointed shall make an investigation and make a consolidated report to the court before the hearing shall commence that they have examined the person alleged to be subject to this Code section and whether or not they find such person to be a person subject to this Code section and whether, in their opinion, the condition of such person is irreversible and incurable. Such report shall include the reasons and factual information as to why such person should be subject to this Code section and the reasons, if any, why such person would not be subject to this Code section. If the examining team determines that such person is subject to this Code section, then the team shall include in its report some of the less permanent methods of preventing conception and shall report on the feasibility of each such method for that person. The person alleged to be subject to this Code section, the applicant, the parents of the person, the guardian ad litem, and the attorney representing the person shall receive a copy of the report not later than five days prior to the hearing and, upon a timely request by any party to the probate court proceedings, each author of that report shall be subject to cross-examination either by testimony in court or by deposition;

(3) Prior to the hearing on the application, evidence shall be presented to the court that a sterilization procedure has been approved for the person alleged to be subject to this Code section by a committee of the medical staff of the accredited hospital in which the operation is to be performed. Such committee shall be one established and maintained in accordance with the standards promulgated by a nationally recognized health care accreditation body, and its approval must be by a majority vote of a membership of not less than three members of the hospital staff, the physician proposing to perform the sterilization procedure not being counted as a member of the committee for this purpose. The approval of such committee as above specified shall be based upon a finding that the condition of the

person alleged to be subject to this Code section is irreversible and incurable in the opinion of the majority of the committee as above specified. The person alleged to be subject to this Code section, the applicant, the parents of the person, the guardian ad litem, and the attorney representing the person shall receive a copy of the consolidated report not later than five days prior to the hearing and, upon a timely request by any party to the probate court proceeding, each author of that finding shall be subject to cross-examination either by testimony in court or by deposition;

(4) If the person alleged to be subject to this Code section requests that the hearing be closed to the public, the judge shall close the hearing to the public unless an overriding or compelling reason can be shown as to why such hearing should not be closed to the public. The ruling by the judge whether to open the hearing to the public or not shall be in writing. Notice of the date, time, and location of the hearing shall be provided to the person alleged to be subject to this Code section and the attorney for the person alleged to be subject to this Code section at least ten days prior to the hearing;

(5) After the hearing, if the judge of the probate court shall find by clear and convincing evidence, from the evidence above specified, that the person alleged to be subject to this Code section is a person subject to this Code section and that the condition of such person is irreversible and incurable, he shall enter an order and judgment authorizing the physician to perform such sterilization procedure in accordance with subsection (d) of this Code section;

(6) Except as provided in Article 6 of Chapter 9 of Title 15, an appeal to the superior court may be had by the applicant or person alleged to be subject to this Code section or by any other interested party on such judgment in the probate court as provided in other cases by the laws of this state. The proceedings before the superior court shall constitute a trial de novo and upon application of either party shall be heard before a jury. If the person alleged to be subject to this Code section requests that the trial be closed to the public, the judge shall close the trial to the public unless an overriding or compelling reason can be shown as to why such trial should not be closed to the public. The ruling by the judge whether to open the trial to the public or not shall be in writing. Any decision of the superior court in such cases may be appealed to the higher courts of this state as in other civil cases. The cost of appeal, if any, to the superior and higher courts shall be taxed as in other civil cases. The pendency of any appeal shall stay the proceedings in the probate court until the appeal is finally determined. Affidavits in forma pauperis regarding court costs and costs of appeal may be filed as in other cases made and provided by the laws of this state; and

(7) The person alleged to be subject to this Code section shall have the right to counsel at all stages of the proceedings provided for in this Code section.

(d) **Performance of sterilization procedure.** After judgment of the court in accordance with the preceding subsections of this Code section shall have become final to the effect that such sterilization shall be performed upon such person subject to this Code section, a sterilization procedure may be performed in an accredited hospital by a physician upon such person subject to this Code section. (Ga. L. 1970, p. 683, § 3; Ga. L. 1971, p. 869, § 1; Ga. L. 1985, p. 1134, § 1; Ga. L. 1986, p. 982, § 10; Ga. L. 1992, p. 6, § 31; Ga. L. 2009, p. 453, § 3-7/HB 228; Ga. L. 2012, p. 337, § 8/SB 361.)

The 2012 amendment, effective July 1, 2012, substituted “a nationally recognized health care accreditation body” for “the Joint Commission on the Accreditation of Hospitals” in the second sentence of paragraph (c)(3).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2009, “develop-

mental disabilities” was substituted for “a developmental disability” in the first sentence of paragraph (c)(2).

Editor’s notes. — Ga. L. 1986, p. 982, § 25, not codified by the General Assembly, provided that that Act would apply to all cases filed on or after July 1, 1986.

JUDICIAL DECISIONS

Procreation is a fundamental right. *Motes v. Hall County Dep’t of Family & Children Servs.*, 251 Ga. 373, 306 S.E.2d 260 (1983).

Code section unconstitutional prior to 1985 amendment. — Seriousness of an individual’s interest at stake in a state initiated sterilization proceeding is such that due process requires “clear and convincing evidence” to authorize the ster-

ilization of an individual. The standard of a “legal preponderance” set by paragraph (c)(4) in O.C.G.A. § 31-20-3 does not meet constitutional requirements. *Motes v. Hall County Dep’t of Family & Children Servs.*, 251 Ga. 373, 306 S.E.2d 260 (1983) (decided prior to 1985 amendment, which substituted a “clear and convincing” standard).

OPINIONS OF THE ATTORNEY GENERAL

Mental incompetent’s right to counsel in sterilization proceeding. — In proceedings for sterilization of mental incompetent, incompetent has a right to counsel; if indigent, the incompetent has a right to appointed counsel. 1971 Op. Att’y Gen. No. U71-29.

Representation of person alleged to be subject to section. — Functions of court-appointed defense attorney and guardian ad litem may not be performed by the same person in involuntary sterilization procedures. 1987 Op. Att’y Gen. No. U87-4.

Hospitals operated exclusively by federal government exempt from state accreditation. — United States Army hospital in federal enclave not accredited or subject to accreditation under Georgia law; accreditation by state Department of Human Resources is not extended to hospitals operated exclusively by federal government. 1973 Op. Att’y Gen. No. U73-45.

Payment of cost of examining teams and hospital committees. — Fees and expenses of medical examining teams and hospital committees mandated

by O.C.G.A. § 31-20-3 are a proper charge on the county treasury upon court order. 1987 Op. Att'y Gen No. U87-4.

RESEARCH REFERENCES

Am. Jur. 2d. — 59 Am. Jur. 2d, Parent and Child, § 71. 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers, § 262.

Am. Jur. Proof of Facts. — Proof of Qualification for Sterilization of a Person With a Mental Disability, 49 POF3d 101.

C.J.S. — 16B C.J.S., Constitutional Law, § 1059 et seq. 16D C.J.S., Constitutional Law, § 1847 et seq. 39A C.J.S., Health and Environment, §§ 65, 76, 84 et seq. 56 C.J.S., Mental Health, § 7 et seq. 67A C.J.S., Parent and Child, §§ 38, 40, 41, 46 et seq. 70 C.J.S., Physicians, Sur-

geons, and Other Health Care Providers, § 46 et seq.

ALR. — Legality of voluntary nontherapeutic sterilization, 35 ALR3d 1444.

Validity of statutes authorizing asexualization or sterilization of criminals or mental defectives, 53 ALR3d 960.

Jurisdiction of court to permit sterilization of mentally defective person in absence of specific statutory authority, 74 ALR3d 1210.

Power of parent to have mentally defective child sterilized, 74 ALR3d 1224.

31-20-4. Restriction on performance of sterilization procedure.

No operation under this chapter shall be performed by any person other than a physician duly licensed without restriction to practice medicine and surgery in this state pursuant to Chapter 34 of Title 43. (Ga. L. 1966, p. 453, § 4; Ga. L. 1970, p. 683, § 5.)

RESEARCH REFERENCES

Am. Jur. 2d. — 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers, § 262.

31-20-5. Civil and criminal liability; compliance where other medical treatment may result in sterilization.

When an operation shall have been performed in compliance with this chapter, no physician duly licensed without restriction to practice medicine and surgery in this state or other person legally participating in the execution of this chapter shall be liable civilly or criminally as a result of such operation or participation therein, except in the case of negligence in the performance of such operation. Nothing in this chapter shall be construed so as to require compliance therewith where medical or surgical treatment for sound therapeutic purposes, by a physician duly licensed without restriction to practice medicine and surgery in this state, is required of any person in this state and where such treatment, at the same time that it serves such purposes, may involve the nullification or destruction of reproductive functions. (Ga. L. 1966, p. 453, § 5; Ga. L. 1970, p. 683, § 6.)

JUDICIAL DECISIONS

Claims based on contract barred. *Shessel v. Gay*, 139 Ga. App. 429, 228 S.E.2d 361 (1976).

Sterilization operation. — Since O.C.G.A. § 31-20-5 bars claims based on contract and all other claims, civil or criminal, except one based on the negligent performance of the sterilization operation, when it is uncontroverted that there was no negligence in the performance of the sterilization operation and that the sterilization procedure was performed in full compliance with O.C.G.A. Ch. 20, T. 31, the patient's claim, whether based on contract or some other negligence, fell within the scope of O.C.G.A. § 31-20-5, and the trial court correctly granted summary judgment in favor of the physician. *Cummings v. Dudley*, 180 Ga. App. 545, 349 S.E.2d 543 (1986).

Written consent to the performance of a possible hysterectomy was not sufficient consent for the performance of a bilateral tubal ligation after obtaining only oral consent thereto. A tubal ligation is a "sterilization procedure" within the meaning of O.C.G.A. § 31-20-1(3) and written consent was required when the only purpose served by the performance of the procedure was to prevent a future pregnancy and it served no sound therapeutic purpose which was of any immediate benefit to the patient's non-reproductive health. *Kaplan v. Blank*, 204 Ga. App. 378, 419 S.E.2d 127 (1992).

Purpose of every sterilization procedure is the prevention of a future pregnancy and to hold that such a purpose, standing alone, constitutes a "sound therapeutic purpose" within the meaning of O.C.G.A. § 31-20-5 would effectively negate O.C.G.A. Ch. 20, T. 31. *Kaplan v. Blank*, 204 Ga. App. 378, 419 S.E.2d 127 (1992).

Operation without consent constitutes technical battery. — Operation performed without the consent of the patient constitutes a technical battery for which a physician may be held liable. *Gowen v. Carpenter*, 189 Ga. App. 477, 376 S.E.2d 384 (1988).

Showing of negligence required. — Since the physician complied with the requirements of O.C.G.A. § 31-20-2, and the patient did not claim that the physician was negligent in performing the vasectomy procedure, claims for negligence, fraud, battery, violations of the Fair Business Practices Act, O.C.G.A. § 10-1-390 et seq., and loss of consortium were barred. *Ariemma v. Perlow*, 223 Ga. App. 360, 477 S.E.2d 590 (1996).

Limitation of actions. — Statute of limitations for battery resulting from an unauthorized operation is the two-year statute of limitations for injuries to the person and the four-year statute of limitations for loss of consortium. *Gowen v. Carpenter*, 189 Ga. App. 477, 376 S.E.2d 384 (1988); *Gowen v. Cady*, 189 Ga. App. 473, 376 S.E.2d 390, cert. denied, 189 Ga. App. 912, 376 S.E.2d 390 (1988).

RESEARCH REFERENCES

C.J.S. — 70 C.J.S., Physicians, Surgeons, and Other Health Care Providers, § 160.

ALR. — Physicians and surgeons: res ipsa loquitur, or presumption or inference of negligence, in malpractice cases, 82 ALR2d 1262.

Malpractice in appendicitis treatment and surgery, 94 ALR2d 1006.

Physician's or surgeon's malpractice in connection with diagnosis or treatment of rectal or anal disease, 5 ALR3d 916.

Legality of voluntary nontherapeutic sterilization, 35 ALR3d 1444.

31-20-6. Exemptions from requirements of chapter.

(a) Nothing in this chapter shall require a hospital to admit any patient for the purpose of performing a sterilization procedure, nor

shall any hospital be required to appoint a committee such as contemplated under paragraph (3) of subsection (c) of Code Section 31-20-3.

(b) A physician, or any other person who is a member of or associated with the staff of a hospital, or any employee of a hospital in which a sterilization procedure has been authorized who shall object to such sterilization procedure on moral or religious grounds shall not be required to participate in the medical procedures or the committee procedures leading to such sterilization procedure; the refusal of any such person to participate therein shall not form the basis of any claim for damages resulting from such refusal or for any disciplinary or recriminatory action against such person. (Ga. L. 1970, p. 683, § 7.)

RESEARCH REFERENCES

Am. Jur. 2d. — 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers, § 262.

CHAPTER 21

DEAD BODIES

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		31-21-41.	Traffic in human bodies.
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31-21-4.	Burial at sea of cremated re- mains; notification that cre- mated remains are ready for interment; unclaimed cre- mated remains.	31-21-43.	Removal of dead body from grave for purposes of sale or dissection.
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31-21-7.	Preneed contracts and revis- ions; affidavit on disposition of remains; role of probate court; warrant as to truthful- ness; liability of funeral home.	31-21-45.	Public exhibit or display of dead human bodies of Ameri- can Indians or American In- dian human remains.
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cords, T. 31, C. 10. Death certificates, § 31-10-15. Duty of county to pay for interment of deceased indigent persons, § 36-12-5. Funeral directors, embalmers,

and operators of funeral establishments, T. 43, C. 18. Anatomical gifts, § 44-5-140 et seq. Post-mortem examinations and autopsies, § 45-16-20 et seq.

Administrative rules and regula-

tions. — Organization and regulation of funeral services, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia State Board of Funeral Service, Chapter 250-1 et seq.

RESEARCH REFERENCES

Am. Jur. 2d. — 22A Am. Jur. 2d, Dead Bodies, §§ 1, 6, 7.

C.J.S. — 25A C.J.S., Dead Bodies, § 1.

ALR. — Constitutionality of statute or ordinance requiring, or permitting, removal of bodies from cemeteries, 71 ALR 1040.

Enforcement of preference expressed by decedent as to disposition of his body after death, 54 ALR3d 1037.

Dead bodies: liability for improper manner of reinterment, 53 ALR4th 394.

ARTICLE 1

GENERAL PROVISIONS

31-21-1. Approved disinfectant; “embalming” defined.

(a) An approved disinfectant fluid shall contain not less than 5 percent formaldehyde gas.

(b) As used in this chapter, the term “embalming” means the injection by a licensed embalmer of not less than 10 percent of the weight for bodies of persons dead of communicable diseases, such as smallpox and diphtheria, injected arterially in addition to cavity injection and, in all other cases, not less than 6 percent of the body weight injected arterially in addition to cavity injection. (Ga. L. 1916, p. 77, § 1; Code 1933, § 88-605; Code 1933, § 88-2713, enacted by Ga. L. 1964, p. 499, § 1.)

Cross references. — Licenses for funeral directors and embalmers, § 43-18-40 et seq.

Law reviews. — For article, “A Review

of Three Generations, No Imbeciles: Eugenics, The Court, and Buck v. Bell,” see 26 Ga. St. U.L. Rev. 1295, (2010).

RESEARCH REFERENCES

C.J.S. — 25A C.J.S., Dead Bodies, § 2, 3.

31-21-2. Conflict with authority of Commissioner of Agriculture.

Nothing in this article shall repeal or be construed to conflict with any power and authority now vested in the Commissioner of Agriculture by the laws of this state. (Code 1933, § 88-2714, enacted by Ga. L. 1964, p. 499, § 1.)

31-21-3. (Effective until January 1, 2013. See note.) Death of person with infectious or communicable disease; required reporting procedures; confidentiality; disclosure; penalties.

(a) For the purposes of this Code section, the term “infectious or communicable disease” shall include the following:

- (1) Infectious hepatitis;
- (2) Tuberculosis;
- (3) Any venereal disease enumerated in Code Section 31-17-1; or
- (4) Acquired immune deficiency syndrome (AIDS).

(b)(1) When a person who has been diagnosed as having an infectious or communicable disease dies in a hospital or other health care facility, the attending physician shall prepare a written notification describing such disease to accompany the body when it is picked up for disposition.

(2) When a person dies outside of a hospital or health care facility and without an attending physician, any family member or person making arrangements for the disposition of the dead body who knows that such dead person had been diagnosed as having an infectious or communicable disease at the time of death shall prepare a written notification describing such disease to accompany the body when it is picked up for disposition.

(3) Any person who picks up a dead body for disposition and who has been notified that the person had been diagnosed as having an infectious or communicable disease at the time of death pursuant to the provisions of paragraph (1) or (2) of this subsection shall present such notification accompanying the dead body to any embalmer, funeral director, or other person taking possession of the dead body.

(c) Information regarding a deceased’s infectious or communicable disease and contained in a notification required to be prepared pursuant to subsection (b) of this Code section shall be privileged and confidential and may only be disclosed if:

- (1) That disclosure is required pursuant to Chapter 17 of this title;
- (2) That disclosure is required by federal law, but only to the extent so required;
- (3) That disclosure is made by a physician pursuant to Code Section 24-9-40 or any other law authorizing a physician to disclose otherwise privileged information;
- (4) That disclosure is for research purposes and does not reveal:

(A) The identity of the deceased; or

(B) Information which would reveal the identity of the deceased;

(5) That disclosure involves information regarding sexual assault or sexual exploitation of a deceased child and is required to be reported pursuant to Code Section 19-7-5 or any other law requiring the reporting of such assault or exploitation of a child, but only to the extent that such disclosure is so required to be reported;

(6) That disclosure involves information regarding a deceased minor and the disclosure is made to the parent or guardian of that minor; or

(7) That disclosure is made to the person who picks up the dead body or is made in the ordinary course of business to any employee or agent of any person or entity authorized or required under this Code section to receive or report that information.

(d) Information privileged and confidential under this Code section may not be disclosed pursuant to discovery proceedings, subpoena, or court order.

(e) Any disclosure authorized by this Code section or any unauthorized disclosure of information or communications made privileged and confidential by this Code section shall not in any way abridge or destroy the confidential or privileged character thereof except for the purposes for which any authorized disclosure is made. Any person making a disclosure authorized by this chapter shall not be liable therefor, notwithstanding any contrary provisions of law.

(f) Any person having duties imposed upon that person pursuant to subsection (b) of this Code section who knowingly refuses or omits to perform such duties shall be guilty of a misdemeanor. (Code 1981, § 31-21-3, enacted by Ga. L. 1986, p. 1513, § 1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1991, a semicolon was substituted for the period at the end of paragraph (c)(5).

Editor's notes. — Code Section

31-21-3 is set out twice in this Code. The first version is effective until January 1, 2013, and the second version becomes effective on that date.

OPINIONS OF THE ATTORNEY GENERAL

Not fingerprintable offense. — Failure of an embalmer, funeral director, or other such person to be given notice when a person has been diagnosed as having

certain diseases is not an offense for which persons charged are to be fingerprinted. 1986 Op. Att'y Gen. 86-30.

31-21-3. (Effective January 1, 2013. See note.) Death of person with infectious or communicable disease; required reporting procedures; confidentiality; disclosure; penalties.

(a) For the purposes of this Code section, the term “infectious or communicable disease” shall include the following:

- (1) Infectious hepatitis;
- (2) Tuberculosis;
- (3) Any venereal disease enumerated in Code Section 31-17-1; or
- (4) Acquired immune deficiency syndrome (AIDS).

(b)(1) When a person who has been diagnosed as having an infectious or communicable disease dies in a hospital or other health care facility, the attending physician shall prepare a written notification describing such disease to accompany the body when it is picked up for disposition.

(2) When a person dies outside of a hospital or health care facility and without an attending physician, any family member or person making arrangements for the disposition of the dead body who knows that such dead person had been diagnosed as having an infectious or communicable disease at the time of death shall prepare a written notification describing such disease to accompany the body when it is picked up for disposition.

(3) Any person who picks up a dead body for disposition and who has been notified that the person had been diagnosed as having an infectious or communicable disease at the time of death pursuant to the provisions of paragraph (1) or (2) of this subsection shall present such notification accompanying the dead body to any embalmer, funeral director, or other person taking possession of the dead body.

(c) Information regarding a deceased’s infectious or communicable disease and contained in a notification required to be prepared pursuant to subsection (b) of this Code section shall be privileged and confidential and may only be disclosed if:

- (1) That disclosure is required pursuant to Chapter 17 of this title;
- (2) That disclosure is required by federal law, but only to the extent so required;
- (3) (Effective January 1, 2013. See note.) That disclosure is made by a physician pursuant to Code Section 24-12-1 or any other law authorizing a physician to disclose otherwise privileged information;
- (4) That disclosure is for research purposes and does not reveal:

(A) The identity of the deceased; or

(B) Information which would reveal the identity of the deceased;

(5) That disclosure involves information regarding sexual assault or sexual exploitation of a deceased child and is required to be reported pursuant to Code Section 19-7-5 or any other law requiring the reporting of such assault or exploitation of a child, but only to the extent that such disclosure is so required to be reported;

(6) That disclosure involves information regarding a deceased minor and the disclosure is made to the parent or guardian of that minor; or

(7) That disclosure is made to the person who picks up the dead body or is made in the ordinary course of business to any employee or agent of any person or entity authorized or required under this Code section to receive or report that information.

(d) Information privileged and confidential under this Code section may not be disclosed pursuant to discovery proceedings, subpoena, or court order.

(e) Any disclosure authorized by this Code section or any unauthorized disclosure of information or communications made privileged and confidential by this Code section shall not in any way abridge or destroy the confidential or privileged character thereof except for the purposes for which any authorized disclosure is made. Any person making a disclosure authorized by this chapter shall not be liable therefor, notwithstanding any contrary provisions of law.

(f) Any person having duties imposed upon that person pursuant to subsection (b) of this Code section who knowingly refuses or omits to perform such duties shall be guilty of a misdemeanor. (Code 1981, § 31-21-3, enacted by Ga. L. 1986, p. 1513, § 1; Ga. L. 2011, p. 99, § 44/HB 24.)

The 2011 amendment, effective January 1, 2013, substituted “Code Section 24-12-1” for “Code Section 24-9-40” in the middle of paragraph (c)(3). See editor’s note for applicability.

Editor’s notes. — Code Section 31-21-3 is set out twice in this Code. The first version is effective until January 1, 2013, and the second version becomes effective on that date.

Ga. L. 2011, p. 99, § 101/HB 24, not codified by the General Assembly, provides that this Act shall apply to any motion made or hearing or trial commenced on or after January 1, 2013.

Law reviews. — For article, “Evidence,” see 27 Ga. St. U.L. Rev. 1 (2011). For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 1 (2011).

31-21-4. Burial at sea of cremated remains; notification that cremated remains are ready for interment; unclaimed cremated remains.

(a)(1) Cremated remains may be taken by boat from any harbor in this state, or by air, for burial at sea at a point not less than three miles from the nearest shoreline. Cremated remains shall be removed from their container before such remains are buried at sea.

(2) Any person who buries at sea, either from a boat or from the air, any human cremated remains shall carry out the burial services within 50 days from the reduction of the body to cremated remains and file with the local registrar of births, deaths, and other vital records in the county nearest the point where the remains were buried a verified statement containing the name of the deceased person, the time and place of death, the place at which the cremated remains were buried, and any other information that the local registrar may require. Burial services may be delayed until weather conditions improve if inclement weather prevents safe burial.

(b) Any person who requests that a dead body be cremated shall provide the funeral establishment or other person responsible for the cremation an address at which such person can be notified when the cremated remains are ready for interment. Notification shall be made by first-class mail to such person at the address provided. If the cremated remains are not claimed for interment or other disposition within 60 days from the date that the notification is mailed, such remains shall be turned over to the coroner to be interred in a plot or niche in a cemetery where indigents are buried. (Code 1981, § 31-21-4, enacted by Ga. L. 1989, p. 813, § 1; Ga. L. 1991, p. 94, § 31.)

31-21-5. Incineration or cremation of dead body or parts thereof.

(a) It shall be unlawful for any person to incinerate or cremate a dead body or parts thereof; provided, however, that the provisions of this subsection shall not apply to a crematory licensed by the State Board of Funeral Service pursuant to Chapter 18 of Title 43 or to a hospital, clinic, laboratory, or other facility authorized by the Department of Community Health and in a manner approved by the commissioner of community health.

(b) A person who violates the provisions of subsection (a) of this Code section shall be guilty of a misdemeanor. (Code 1981, § 31-21-5, enacted by Ga. L. 1992, p. 992, § 1; Ga. L. 2008, p. 12, § 2-31/SB 433.)

31-21-6. Notification of law enforcement agency upon disturbance, destruction, or debasement of human remains.

(a) Any person who knows or has reason to believe that interred human remains have been or are being disturbed, destroyed, defaced, mutilated, removed, or exposed without a permit issued pursuant to Code Section 36-72-4, 12-3-52, or 12-3-82 or without written permission of the landowner for an archeological excavation on the site by an archeologist or not in compliance with Section 106 of the National Historic Preservation Act, as amended, and any person who accidentally or inadvertently discovers or exposes human remains shall immediately notify the local law enforcement agency with jurisdiction in the area where the human remains are located.

(b) Any law enforcement agency notified of the discovery or disturbance, destruction, defacing, mutilation, removal, or exposure of interred human remains shall immediately report such notification to the coroner or medical examiner of the county where the human remains are located, who shall determine whether investigation of the death is required under Code Section 45-16-24. If investigation of the death is not required, the coroner or medical examiner shall immediately notify the local governing authority of the county or municipality in which the remains are found and the Department of Natural Resources. If the remains are believed to be those of one or more aboriginal or prehistoric ancestors of or American Indians, then the Department of Natural Resources shall notify the Council on American Indian Concerns. All land-disturbing activity likely to further disturb the human remains shall cease until:

(1) The county coroner or medical examiner, after determining that investigation of the death is required, has completed forensic examination of the site;

(2) A permit is issued for land use change and disturbance pursuant to Code Section 36-72-4; a permit is issued or a contract is let pursuant to subsection (d) of Code Section 12-3-52; or written permission is obtained from the landowner for the conduct of an archeological excavation; or

(3) If such a permit is not sought, the Department of Natural Resources arranges with the landowner for the protection of the remains.

(c) The provisions of this Code section shall not apply to normal farming activity including, but not limited to, plowing, disking, harvesting, and grazing of livestock. (Code 1981, § 31-21-6, enacted by Ga. L. 1992, p. 1790, § 3.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1992, this Code section was redesignated as Code Section 31-21-6 since Ga. L. 1992, p. 992, § 1, and Ga. L. 1992, p. 1790, § 3, both enacted a Code Section 31-21-5, and “archeologist”

was substituted for “archaeologist” in subsection (a).

U.S. Code. — The National Historic Preservation Act, referred to in this Code section, is codified at 16 U.S.C. § 470 et seq.

31-21-7. Preneed contracts and revisions; affidavit on disposition of remains; role of probate court; warrant as to truthfulness; liability of funeral home.

(a) A person who is 18 years of age or older and of sound mind, by entering into a preneed contract, as defined in paragraph (30) of Code Section 10-14-3, may direct the location, manner, and conditions of the disposition of the person’s remains and the arrangements for funeral goods and services to be provided upon the person’s death. The disposition directions and funeral prearrangements that are contained in a preneed contract shall not be subject to cancellation or substantial revision unless the cancellation or substantial revision has been ordered by a person the decedent has appointed in the preneed contract as the person authorized to cancel or revise the terms of the preneed contract or unless any resources set aside to fund the preneed contract are insufficient under the terms of the preneed contract to carry out the disposition directions and funeral prearrangements contained therein.

(b) Except as provided in subsection (c) of this Code section, the right to control the disposition of the remains of a deceased person; the location, manner, and conditions of disposition; and arrangements for funeral goods and services to be provided vests in the following, in the order named, provided that such person is 18 years of age or older and is of sound mind:

(1) The health care agent, as defined in Code Section 31-32-2;

(1.1) If the deceased person died while serving in any branch of the United States Armed Forces as defined in 10 U.S.C. Section 148, the person, if any, designated by the deceased person as authorized to direct disposition as listed on the deceased person’s United States Department of Defense Record of Emergency Data, DD Form 93, or any similar successor form adopted by the Department of Defense;

(2)(A) A person designated by the decedent as the person with the right to control the disposition in an affidavit executed in accordance with subparagraph (B) of this paragraph.

(B) A person who is 18 years of age or older and of sound mind wishing to authorize another person to control the disposition of his or her remains may execute an affidavit before a notary public in substantially the following form:

"State of Georgia

County of _____

I, _____, do hereby designate _____ with the right to control the disposition of my remains upon my death. I ____ have ____ have not attached specific directions concerning the disposition of my remains with which the designee shall substantially comply, provided that such directions are lawful and there are sufficient resources in my estate to carry out the directions.

Subscribed and sworn to before me this _____ day of the month of _____ of the year _____.

_____ (signature of affiant)

_____ (signature of notary public);

(3) The surviving spouse of the decedent;

(4) The sole surviving child of the decedent or, if there is more than one child of the decedent, the majority of the surviving children; provided, however, that less than one-half of the surviving children shall be vested with the rights under this Code section if they have used reasonable efforts to notify all other surviving children of their instructions and are not aware of any opposition to those instructions on the part of more than one-half of all surviving children;

(5) The surviving parent or parents of the decedent. If one of the surviving parents is absent, the remaining parent shall be vested with the rights and duties under this Code section after reasonable efforts have been unsuccessful in locating the absent surviving parent;

(6) The surviving brother or sister of the decedent or, if there is more than one sibling of the decedent, the majority of the surviving siblings; provided, however, that less than the majority of surviving siblings shall be vested with the rights and duties under this Code section if they have used reasonable efforts to notify all other surviving siblings of their instructions and are not aware of any opposition to those instructions on the part of more than one-half of all surviving siblings;

(7) The surviving grandparent of the decedent or, if there is more than one surviving grandparent, the majority of the grandparents; provided, however, that less than the majority of the surviving grandparents shall be vested with the rights and duties under this Code section if they have used reasonable efforts to notify all other surviving grandparents of their instructions and are not aware of any

opposition to those instructions on the part of more than one-half of all surviving grandparents;

(8) The guardian of the person of the decedent at the time of the decedent's death if one had been appointed;

(9) The personal representative of the estate of the decedent;

(10) The person in the classes of the next degree of kinship, in descending order, under the laws of descent and distribution to inherit the estate of the decedent. If there is more than one person of the same degree, any person of that degree may exercise the right of disposition;

(11) If the disposition of the remains of the decedent is the responsibility of the state or a political subdivision of the state, the public officer, administrator, or employee responsible for arranging the final disposition of decedent's remains; or

(12) In the absence of any person under paragraphs (1) through (11) of this subsection, any other person willing to assume the responsibilities to act and arrange the final disposition of the decedent's remains, including the funeral director with custody of the body, after attesting in writing that a good faith effort has been made to no avail to contact the individuals under paragraphs (1) through (11) of this subsection.

(c) A person entitled under law to the right of disposition shall forfeit that right, and the right is passed on to the next qualifying person as listed in subsection (b) of this Code section, in the following circumstances:

(1) Any person charged with murder or voluntary manslaughter in connection with the decedent's death and whose charges are known to the funeral director; provided, however, that, if the charges against such person are dismissed or if such person is acquitted of the charges, the right of disposition is returned to the person;

(2) Any person who does not exercise his or her right of disposition within two days of notification of the death of decedent or within three days of decedent's death, whichever is earlier;

(3) If the person and the decedent are spouses and a petition to dissolve the marriage was pending at the time of decedent's death; or

(4) Where the probate court pursuant to subsection (d) of this Code section determines that the person entitled to the right of disposition and the decedent were estranged at the time of death. For purposes of this Code section, the term "estranged" means a physical and emotional separation from the decedent at the time of death which

has existed for a period of time that clearly demonstrates an absence of due affection, trust, and regard for the decedent.

(d) Notwithstanding subsections (b) and (c) of this Code section, the probate court for the county where the decedent resided may award the right of disposition to the person determined by the court to be the most fit and appropriate to carry out the right of disposition and may make decisions regarding the decedent's remains if those sharing the right of disposition cannot agree. The following provisions shall apply to the court's determination under this subsection:

(1) If the persons holding the right of disposition are two or more persons with the same relationship to the decedent and they cannot, by majority vote, make a decision regarding the disposition of the decedent's remains, any of such persons or a funeral home with custody of the remains may file a petition asking the probate court to make a determination in the matter;

(2) In making a determination under this subsection, the probate court shall consider the following:

(A) The reasonableness and practicality of the proposed funeral arrangements and disposition;

(B) The degree of the personal relationship between the decedent and each of the persons claiming the right of disposition;

(C) The desires of the person or persons who are ready, able, and willing to pay the cost of the funeral arrangements and disposition;

(D) The convenience and needs of other families and friends wishing to pay respects;

(E) The desires of the decedent; and

(F) The degree to which the funeral arrangements would allow maximum participation by all wishing to pay respect;

(3) In the event of a dispute regarding the right of disposition, a funeral home shall not be liable for refusing to accept the remains or to inter or otherwise dispose of the remains of the decedent or complete the arrangements for the final disposition of the remains until the funeral home receives a court order or other written agreement signed by the parties in the disagreement that decides the final disposition of the remains. If the funeral home retains the remains for final disposition while the parties are in disagreement, the funeral home may embalm or refrigerate and shelter the body, or both, in order to preserve it while awaiting the final decision of the probate court and may add the cost of embalming or refrigeration and sheltering to the final disposition costs. If a funeral home brings an action under this subsection, the funeral home may add the legal fees

and court costs associated with a petition under this subsection to the cost of final disposition. This subsection may not be construed to require or to impose a duty upon a funeral home to bring an action under this subsection. A funeral home and its employees shall not be held criminally or civilly liable for choosing not to bring an action under this subsection; and

(4) Except to the degree it may be considered by the probate court under subparagraph (C) of paragraph (2) of this subsection, the fact that a person has paid or agreed to pay for all or part of the funeral arrangements and final disposition shall not give that person a greater claim to the right of disposition than the person would otherwise have. The personal representative of the estate of the decedent shall not, by virtue of being the personal representative, have a greater claim to the right of disposition than the person would otherwise have.

(e) Any person signing a funeral service agreement, cremation authorization form, or any other authorization for disposition shall be deemed to warrant the truthfulness of any facts set forth therein, including the identity of the decedent whose remains are to be buried, cremated, or otherwise disposed of, and the party's authority to order such disposition. A funeral home shall have the right to rely on such funeral service agreement or authorization and shall have the authority to carry out the instructions of the person or persons the funeral home reasonably believes hold the right of disposition. The funeral home shall have no responsibility to contact or to independently investigate the existence of any next of kin or relative of the decedent. If there is more than one person in a class who are equal in priority and the funeral home has no knowledge of any objection by other members of such class, the funeral home shall be entitled to rely on and act according to the instructions of the first such person in the class to make funeral and disposition arrangements, provided that no other person in such class provides written notice of his or her objections to the funeral home.

(f) If a funeral establishment or funeral director relies in good faith upon the instructions of an individual claiming the right of disposition pursuant to subsection (b) or (d) of this Code section and such individual is later determined to have falsely or fraudulently represented himself or herself as having such a right, the funeral establishment or funeral director shall not be subject to criminal or civil liability or subject to disciplinary action for carrying out the disposition of the remains in accordance with such instructions. (Code 1981, § 31-21-7, enacted by Ga. L. 2009, p. 292, § 1/HB 68; Ga. L. 2010, p. 208, § 1/SB 355; Ga. L. 2012, p. 775, § 31/HB 942.)

The 2010 amendment, effective May 20, 2010, added paragraph (b)(1.1).

The 2012 amendment, effective May 1, 2012, part of an Act to revise, modernize, and correct the Code, inserted “of age” in subsection (b); and revised language in the second sentence of subsection (e).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2009, “(11)” was substituted for “(10)” twice in paragraph (b)(12).

ARTICLE 2

DISPOSITION OF UNCLAIMED DEAD BODIES

Cross references. — Law enforcement agencies’ duties as to identification of persons found dead, §§ 35-1-8, 35-3-4.

31-21-20. Board for the Distribution of Cadavers.

The academic deans of medical, osteopathic medical, and dental colleges or a representative appointed by the president of such schools incorporated under the laws of this state or otherwise operating in this state with authorization from the Nonpublic Postsecondary Education Commission shall constitute the Board for the Distribution of Cadavers to expedite the distribution and delivery of dead bodies described in Code Section 31-21-21 to and among such institutions as are entitled thereto. This board shall have power to establish rules and regulations for its governance and to appoint and remove its officers and shall keep minutes of its transactions. Records shall be kept, under its direction, of all bodies received and distributed, both from within and without this state, and of the persons or institutions to whom they may be distributed, which records shall be open at all times to the inspection of members of this board, any district attorney, or prosecuting attorney of any city or state court. The board shall appoint a member of the board to be chairperson, and such member shall call at least one meeting per year to carry out the responsibilities of the board. For the purposes of this article, the term “board” shall mean the Board for the Distribution of Cadavers. (Ga. L. 1887, p. 86, § 1; Civil Code 1895, § 1511; Civil Code 1910, § 1755; Code 1933, § 88-701; Code 1933, § 88-2701, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1983, p. 884, § 3-25; Ga. L. 2007, p. 472, § 1/SB 204.)

OPINIONS OF THE ATTORNEY GENERAL

Disposition of unclaimed prison inmate’s body. — When body of inmate is not claimed, notice should be posted on courthouse door for 24 hours, and notice should be given to board and body delivered as directed by board. 1965-66 Op. Att’y Gen. No. 66-84.

Disposition of prison inmate’s body claimed by one in financial straits. — When body of inmate is claimed by relative, or person connected by marriage, in financial straits, such person should be advised that, upon request, the body will be buried at public expense, or that such

person may execute a consent to disposition to an institution; if such consent is executed, the board should be notified and claimant may then negotiate with a school or college which receives the body. 1965-66 Op. Att'y Gen. No. 66-84.

Disposition of unclaimed prison inmate's body donated by will. — When inmate donates the inmate's body by will, and body is not claimed, notice should be posted on courthouse door for 24 hours and the board should be notified of the name of the school or college specified by the inmate in the inmate's will. 1965-66 Op. Att'y Gen. No. 66-84.

Disposition of prison inmate's body

donated by will but claimed by proper claimant. — When an inmate donates the inmate's body by will, and the body is claimed by a proper claimant, a claimant should be advised that the body will be buried at public expense and that the claimant should execute a consent to disposition to an institution; if consent is executed, the board should be notified of the name of the school or college specified by the inmate in the inmate's will. If consent is not executed, the body should be buried, either at the expense of the claimant or at public expense, as the case may be, notwithstanding the will. 1965-66 Op. Att'y Gen. No. 66-84.

31-21-21. Delivery to board of certain unclaimed bodies.

(a) All public officers of this state and their assistants and all officers and their deputies of every county, city, town, or other municipality and of every prison, county correctional institution, morgue, public hospital, health care facility, except the Central State Hospital which institution shall have authority to perform autopsies on the dead bodies of persons dying as patients therein in the discretion of the superintendent and medical staff of the institution, having control over any dead human body not dead from contagious or infectious disease and required to be buried at public expense are required to notify the board created under Code Section 31-21-20 or such person as may from time to time be designated in writing by such board for distribution or its duly authorized officer whenever any such body comes into their possession or control. Such officers shall, without fee or reward, deliver the body and allow such board and its duly authorized agents who may comply with this chapter to remove such body and to provide for its use only within this state, solely for the advancement of medical science. No such notice shall be given nor shall any such body be delivered if any person, claiming to be and satisfying the authorities in charge of the body that he or she is of any degree of kin, or is related by marriage to, or socially or otherwise connected with and interested in the deceased, shall claim the body for burial, cremation, or other proper disposition; but it shall be at once surrendered to such person or shall be buried at public expense at the request of such claimant if a relative by blood or a connection by marriage and financially unable to provide burial, cremation, or other proper disposition.

(b) A body described in subsection (a) of this Code section shall in each and every instance be held and kept by the person or persons having charge or control of it for at least 24 hours after death, before delivery to such board or its agent for distribution, during which period

notice of the death of such person shall be posted at the courthouse door of the county in which such body is held. (Ga. L. 1887, p. 87, § 2; Civil Code 1895, §§ 1512, 1514; Civil Code 1910, §§ 1756, 1758; Ga. L. 1918, p. 114, § 1; Ga. L. 1920, p. 130, § 1; Code 1933, §§ 88-702, 88-704; Code 1933, §§ 88-2702, 88-2704, enacted by Ga. L. 1964, p. 499, § 1.)

OPINIONS OF THE ATTORNEY GENERAL

State hospital's discretion to comply with provisions. — While it was the intention of the General Assembly to exempt a state hospital from provisions of the Act, and from requirements of this section, superintendent and medical staff of the institution have discretion of complying with requirements and of delivering bodies to distribution board to be used by schools and colleges, and if such bodies are unclaimed by any relative for purpose of burial, state hospital authorities should, insofar as it does not impede their work of promoting science in line of their study and work, comply with the requirements of this Code section. 1945-47 Op. Att'y Gen. p. 521 (see O.C.G.A. § 31-21-21).

Disposition of unclaimed prison inmate's body. — If body of inmate is not claimed, notice should be posted on courthouse door for 24 hours, and notice should be given to board and body delivered as directed by board. 1965-66 Op. Att'y Gen. No. 66-84.

Disposition of prison inmate's body claimed by one in financial strait. — When body of inmate is claimed by relative, or person connected by marriage, in financial straits, such person should be advised that, upon request, the body will be buried at public expense, or that such

person may execute a consent; if such consent is executed, the board should be notified and the claimant may then negotiate with a school or college which receives the body. 1965-66 Op. Att'y Gen. No. 66-84.

Disposition of unclaimed prison inmate's body donated by will. — When inmate donates the inmate's body by will, and the body is not claimed, notice should be posted on the courthouse door for 24 hours and the board should be notified of the name of school or college specified by the inmate in the inmate's will. 1965-66 Op. Att'y Gen. No. 66-84.

Disposition of prison inmate's body donated by will but claimed by proper claimant. — When an inmate donates the inmate's body by will, and body is claimed by the proper claimant, the claimant should be advised that the body will be buried at public expense and that claimant should execute a consent to disposition to an institution; if consent is executed, the board should be notified of name of school or college specified by inmate in the inmate's will. If consent is not executed, the body should be buried, either at the expense of the claimant or at public expense, as case may be, notwithstanding the will. 1965-66 Op. Att'y Gen. No. 66-84.

RESEARCH REFERENCES

Am. Jur. 2d. — 18 Am. Jur. 2d, Coroners or Medical Examiners, §§ 5, 10, 14, 22A Am. Jur. 2d, Dead Bodies, §§ 10 et

seq., 17 et seq., 26, 27, 43, 45 et seq., 115 et seq.

31-21-22. Disposition of bodies of travelers dying suddenly.

Notice shall not be given nor shall any body be delivered pursuant to Code Section 31-21-21 if the deceased person was a traveler who died suddenly. In such cases, the next of kin shall be notified concerning the disposition of the dead body. If no next of kin is located, or no replies

from next of kin are received, or the body is unclaimed within 72 hours, the procedure indicated in this chapter shall apply. (Ga. L. 1887, p. 87, § 2; Civil Code 1895, § 1513; Civil Code 1910, § 1757; Code 1933, § 88-703; Code 1933, § 88-2703, enacted by Ga. L. 1964, p. 499, § 1.)

RESEARCH REFERENCES

C.J.S. — 25A C.J.S., Dead Bodies, §§ 4, 5.

31-21-23. Distribution of bodies by board.

The board for distribution or its duly authorized agent may distribute bodies received pursuant to Code Section 31-21-21 to and among the schools or colleges described in Code Section 31-21-20 for lectures and demonstrations by such schools or colleges. The number assigned to each shall be based upon the number of bona fide students in each dissecting or operative surgery class, which number of students shall be reported by the schools or colleges to the above-specified board at such times as it may direct, provided that the schools or colleges, upon receiving such bodies and before any use is made of them, and without unnecessary mutilation or dissecting, shall cause them to be embalmed properly and preserved carefully and kept for a period of 60 days from the day of receipt and shall deliver them properly prepared for burial, cremation, or other proper disposition to any persons mentioned and described in Code Section 31-21-21, who shall claim such bodies before the expiration of the period of 60 days and who shall satisfy the officers of the school or college that they are such persons as are entitled under Code Section 31-21-21 to claim such bodies. If, at the expiration of 60 days, such body or bodies have not been claimed for burial in the manner and by the person or persons described in this article, they shall then be used by the schools or colleges for the purposes specified in this article. When the bodies have been so used and are no longer needed or serviceable for the purposes mentioned in this article, they shall be decently interred by the schools or colleges. (Ga. L. 1887, p. 87, § 3; Civil Code 1895, § 1515; Civil Code 1910, § 1759; Code 1933, § 88-705; Code 1933, § 88-2705, enacted by Ga. L. 1964, p. 499, § 1.)

OPINIONS OF THE ATTORNEY GENERAL

Disposition of unclaimed stillborn infants by university hospital. — University hospital is without authority to dispose of bodies of unclaimed stillborn

infants for a period of 60 days after the hospital's reception. 1952-53 Op. Att'y Gen. p. 174.

RESEARCH REFERENCES

Am. Jur. 2d. — 22A Am. Jur. 2d, Dead Bodies, §§ 43, 45 et seq.

31-21-24. Transportation of bodies.

The board for distribution may employ a carrier or carriers for the conveyance of bodies described in Code Section 31-21-21, which bodies shall be well enclosed in suitable incasements and carefully deposited free from public observation. The carrier or carriers shall obtain receipts containing the deceased's name or, if the person is unknown, a description for each body delivered, and shall deposit such receipts with the secretary of the above board, who shall record and preserve them. (Ga. L. 1887, p. 87, § 4; Civil Code 1895, § 1516; Civil Code 1910, § 1760; Code 1933, § 88-706; Code 1933, § 88-2706, enacted by Ga. L. 1964, p. 499, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 22A Am. Jur. 2d, Dead Bodies, § 39.

31-21-25. Bonds.

No school or college shall be allowed or permitted to receive any body or bodies described in Code Section 31-21-21 until a bond shall have been given to the Department of Community Health by or in behalf of the school or college by its authorized officers, to be approved by the clerk of the superior court of the county in which the school or college is situated and to be filed in the office of such clerk. The bond shall be in the sum of \$5,000.00 and shall be conditioned that the body or bodies received thereafter by the school or college shall be used only in the manner specified in this article and solely for the promotion of medical science in this state. Actions thereon shall be in the name of the Department of Community Health, and any sums recovered shall be deposited in the state treasury. (Ga. L. 1887, p. 87, § 5; Civil Code 1895, § 1517; Civil Code 1910, § 1761; Code 1933, § 88-707; Code 1933, § 88-2707, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 2007, p. 472, § 2/SB 204; Ga. L. 2009, p. 453, § 1-4/HB 228.)

31-21-26. Payment of expenses.

Neither the state, county, municipality, nor officers thereof shall be placed at any expense by reason of delivery or distribution of bodies; but all expenses thereof shall be borne by those receiving the body or bodies as prescribed by the board for distribution. (Ga. L. 1887, p. 87, § 8; Civil

Code 1895, § 1518; Civil Code 1910, § 1762; Code 1933, § 88-708; Code 1933, § 88-2708, enacted by Ga. L. 1964, p. 499, § 1.)

JUDICIAL DECISIONS

Applicability. — When a county recovered, identified, and properly disposed of bodies found at a crematorium, O.C.G.A. § 31-21-26 did not authorize the county to recover the county's costs of doing so as compensatory damages in a tort action against the crematorium, funeral homes, and funeral directors alleging negligence and public nuisance claims; even if

§ 31-21-26 could be construed as providing a county an affirmative right to sue and recover costs associated with the delivery or distribution of certain dead bodies, the statute referred to the delivery or distribution of unclaimed bodies for purposes of medical research. *Walker County v. Tri-State Crematory*, 284 Ga. App. 34, 643 S.E.2d 324 (2007).

RESEARCH REFERENCES

ALR. — Construction and application of “Free Public Services Doctrine”, 32 of “Municipal Cost Recovery Rule,” or ALR6th 261.

ARTICLE 3

OFFENSES

31-21-40. Omission to perform duties imposed by chapter.

Any person having duties imposed upon him by Code Sections 31-21-20 through 31-21-24 who shall refuse or omit to perform such duties shall be guilty of a misdemeanor. (Ga. L. 1887, p. 87, § 9; Penal Code 1895, § 416; Penal Code 1910, § 409; Code 1933, § 88-9920; Code 1933, § 88-2711, enacted by Ga. L. 1964, p. 499, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 22A Am. Jur. 2d, Dead Bodies, §§ 37 et seq., 42, 78, 79, 81.

C.J.S. — 25A C.J.S., Dead Bodies, § 27 et seq.

31-21-41. Traffic in human bodies.

Any person who shall sell or buy any dead human body or bodies or in any way traffic therein or transmit or convey, or procure the transmission or conveyance of any dead human body or bodies to any place outside of this state for purposes of sale or dissection, shall be punished by imprisonment and labor in the penitentiary for not less than one nor more than ten years; provided, however, that the board for the distribution and delivery of dead bodies shall be empowered to make payments to next of kin as burial benefits amounts not exceeding those payable from time to time by the Social Security Administration. (Ga. L. 1887, p. 87, § 6; Penal Code 1895, § 414; Penal Code 1910,

§ 407; Code 1933, § 88-9918; Code 1933, § 88-2709, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1970, p. 589, § 1.)

Cross references. — Funeral directors and establishments, embalmers, and crematories, T. 43, C. 18. Anatomical gifts, T. 44, C. 5, A. 6.

RESEARCH REFERENCES

Am. Jur. 2d. — 22A Am. Jur. 2d, Dead Bodies, §§ 38, 42, 81.

C.J.S. — 25A C.J.S., Dead Bodies, § 27 et seq.

ALR. — Construction and application of graverobbing statutes, 52 ALR3d 701.

Validity, construction, and application of statutes making it a criminal offense to mistreat or wrongfully dispose of dead body, 81 ALR3d 1071.

31-21-42. Disinterment by coroner without good grounds.

If any person makes affidavit to facts to authorize the coroner to disinter a body or the coroner does so of his own motion and such affidavit is made or disinterment carried out without good grounds or from malice or mischief, the person so swearing or the coroner so officiating shall be guilty of a misdemeanor. In such cases, all circumstances shall be considered by the coroner's jury; and, if it believes there were reasonable grounds for the disinterment at the time it took place, it shall be its duty to acquit. (Orig. Code 1863, § 568; Code 1868, § 632; Code 1873, § 591; Code 1882, § 591; Penal Code 1895, § 417; Penal Code 1910, § 410; Code 1933, § 88-9921; Code 1933, § 88-2712, enacted by Ga. L. 1964, p. 499, § 1.)

Cross references. — Authority of coroner and medical examiner to disinter bodies, § 45-16-45.

RESEARCH REFERENCES

Am. Jur. 2d. — 18 Am. Jur. 2d, Coroners or Medical Examiners, §§ 4, 5. 22A Am. Jur. 2d, Dead Bodies, §§ 50, 54, 59, 60, 74, 75, 78.

C.J.S. — 25A C.J.S., Dead Bodies, §§ 7 et seq., 19, 28.

ALR. — Constitutionality of statute or ordinance requiring, or permitting, removal of bodies from cemeteries, 71 ALR 1040.

Removal and reinterment of remains, 21 ALR2d 472.

Enforcement of preference expressed by decedent as to disposition of his body after death, 54 ALR3d 1037.

Validity, construction, and application of statutes making it a criminal offense to mistreat or wrongfully dispose of dead body, 81 ALR3d 1071.

31-21-43. Removal of dead body from grave for purposes of sale or dissection.

Any person who shall remove a dead human body from any grave or other place of interment or from any vault, tomb, sepulcher, or from any

other place for the purpose of selling or dissecting the same and any person who shall receive or purchase any dead human body knowing it to have been so disinterred or removed for the purpose aforesaid shall be punished by imprisonment and labor in the penitentiary for not less than one nor more than ten years. (Cobb's 1851 Digest, p. 818; Code 1863, § 4438; Ga. L. 1865-66, p. 233, §§ 1, 2; Code 1868, § 4479; Code 1873, § 4563; Code 1882, § 4563; Ga. L. 1887, p. 87, § 7; Penal Code 1895, § 415; Penal Code 1910, § 408; Code 1933, § 88-9919; Code 1933, § 88-2710, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1980, p. 1434, § 1.)

JUDICIAL DECISIONS

Purpose. — Purpose of this section is for the protection of cemeteries and burying-places in this state, and to prevent and punish the unauthorized use of and traffic in dead human bodies. *Davis v. State*, 61 Ga. App. 379, 6 S.E.2d 736 (1939) (see O.C.G.A. § 31-21-43).

Application to any dead body part. — Code section extends not only to dead body as a whole, but to any part thereof; and whether body be in its original or intermediate state of flesh and bones, or in skeleton form only, irrespective of length of time interred. *Davis v. State*, 61 Ga. App. 379, 6 S.E.2d 736 (1939).

Shifting of body insufficient to establish offense. — There is no offense

under this section without removal from grave or other place of interment; a shifting of body would not be sufficient. *Davis v. State*, 61 Ga. App. 379, 6 S.E.2d 736 (1939) (see O.C.G.A. § 31-21-43).

Sufficiency of indictment under section. — Substantial charge in language of this section is sufficient. The indictment need not allege that body is that of a human being when that fact may appear from language used, as that fact will be assumed, but name of person whose body was disinterred must be stated or a reason must be assigned for failure to state it. *Davis v. State*, 61 Ga. App. 379, 6 S.E.2d 736 (1939) (see O.C.G.A. § 31-21-43).

RESEARCH REFERENCES

Am. Jur. 2d. — 22A Am. Jur. 2d, Dead Bodies, §§ 50, 74, 75, 78.

ALR. — Constitutionality of statute or ordinance requiring, or permitting, removal of bodies from cemeteries, 71 ALR 1040.

Constitutionality, construction, and application of criminal statutes specifically denouncing offenses affecting cemeteries, burial lots, tombstones, and the like, 132 ALR 557.

Removal and reinterment of remains, 21 ALR2d 472.

Construction and application of graverobbing statutes, 52 ALR3d 701.

Validity, construction, and application of statutes making it a criminal offense to mistreat or wrongfully dispose of dead body, 81 ALR3d 1071.

31-21-44. Wanton or malicious removal of dead body from grave or disturbance of contents of grave; receipt, retention, disposal, or possession of unlawfully removed dead body or bodily part.

(a) It is unlawful for any person wantonly or maliciously to:

(1) Remove the dead body of a human being from any grave or other place of interment or from any vault, tomb, or sepulcher; or

(2) Otherwise disturb the contents of any grave or other place of interment or any vault, tomb, or sepulcher.

(b) It is unlawful for any person to receive, retain, dispose of, or possess the dead body or any bodily part of a human being knowing it to have been removed unlawfully from any grave or other place of interment or any vault, tomb, or sepulcher. This subsection shall not apply to any person having duties imposed upon that person relating to the possession or disposition of dead bodies while in the performance of said duties, which persons shall include law enforcement personnel, coroners and medical examiners, operators of funeral establishments, cemetery operators, and medical and medical laboratory personnel.

(c) Any person who violates any provision of this Code section shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one year nor more than five years, or by both such imprisonment and fine. (Code 1933, § 88-2710.1, enacted by Ga. L. 1980, p. 1434, § 1; Ga. L. 1989, p. 360, § 1.)

JUDICIAL DECISIONS

No basis for private right of action. — Individual was not permitted pursuant to O.C.G.A. § 9-15-2(d) to file a pro se civil complaint related to the final disposition of a family member's remains because no applicable legal authority recognized any private right of action based on alleged violations of O.C.G.A. § 31-21-44, a criminal statute relating to the disposition of human remains. *Verdi v. Wilkinson County*, 288 Ga. App. 856, 655 S.E.2d 642 (2007), cert. denied, 2008 Ga. LEXIS 397 (Ga. 2008).

In a 42 U.S.C. § 1983 suit, a Native American plaintiff failed to state a claim against a city and a private developer for disturbing graves because O.C.G.A. § 31-21-44 criminalized the destruction of graves but did not create a private cause of action. *Serpentfoot v. Rome City Comm'n*, No. 08-15628, 2009 U.S. App. LEXIS 7712 (11th Cir. Apr. 7, 2009) (Unpublished).

RESEARCH REFERENCES

Am. Jur. 2d. — 22A Am. Jur. 2d, Dead Bodies, § 78.

C.J.S. — 25A C.J.S., Dead Bodies, § 27 et seq.

ALR. — Liability for desecration of graves and tombstones, 77 ALR4th 108.

31-21-44.1. Abuse of dead body.

(a)(1) A person commits the offense of abuse of a dead body if, prior to interment and except as otherwise authorized by law, such person willfully defaces a dead body while the dead body is lying in state or is prepared for burial, showing, or cremation whether in a funeral

establishment, place of worship, home, or other facility for lying in state or at a grave site. The lawful presence of the offender at a place where the dead body is abused shall not be a defense to a prosecution under this Code section.

(2) A person who is providing care to another person, other than in a hospital, either on a permanent or temporary basis, shall, upon the death of such person while in such person's care, be required to notify a local law enforcement agency or coroner or a relative of such deceased person within six hours of the discovery of the death of such person. Any person who intentionally violates the provisions of this paragraph shall commit the offense of abuse of a dead body.

(b) Any person who violates subsection (a) of this Code section shall be guilty of a felony and shall be punished by imprisonment for not less than one nor more than three years. (Code 1981, § 31-21-44.1, enacted by Ga. L. 1995, p. 569, § 1; Ga. L. 1997, p. 1460, § 1; Ga. L. 1998, p. 128, § 31.)

31-21-44.2. Throwing away or abandonment of dead bodies prohibited; punishment.

(a)(1) Any person who throws away or abandons any dead human body or portion of such dead body shall commit the offense of abandonment of a dead body.

(2) It shall not be an offense under this subsection to make final disposition of a dead human body or portion of such dead body under a death certificate issued under Chapter 10 of this title or the law of another jurisdiction by interment, entombment, inurnment, scattering of cremated remains, burial at sea, or any means otherwise authorized by law; nor shall it be an offense under this subsection for any law enforcement personnel, medical or medical laboratory personnel, hospital personnel, coroner or medical examiner, funeral director, embalmer, crematory operator, or cemetery operator to perform those duties or acts relating to possession or disposition of a dead human body or portion of such dead body which are otherwise imposed or authorized by law or lawful contract; nor shall use of a dead human body or portion of such dead body at or by an accredited medical school, dental school, college, or university for education, research, or advancement of medical or dental science or therapy be an offense under this subsection.

(b) Any person who commits an offense of abandonment of a dead body as provided by subsection (a) of this Code section shall be guilty of a felony and shall be punished by imprisonment for not less than one nor more than three years. (Code 1981, § 31-21-44.2, enacted by Ga. L. 2002, p. 641, § 1.)

31-21-45. Public exhibit or display of dead human bodies of American Indians or American Indian human remains.

(a) After December 1, 1992, it shall be unlawful to exhibit or display to the public dead human bodies of American Indians or American Indian human remains except in connection with:

(1) Funeral or burial services;

(2) Education or instruction as part of a course of study at an accredited university, college, or school; or

(3) Educational exhibits or displays as may be allowed only with the express written permission of the lineal descendants of the deceased where such descendants can be identified or by the agent of the deceased's estate or, where there is no lineal descendant or agent of the deceased's estate, by the Council on American Indian Concerns created by Code Section 44-12-280.

(b) Any person who violates this Code section is guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one nor more than two years. (Code 1981, § 31-21-45, enacted by Ga. L. 1992, p. 1790, § 4; Ga. L. 2000, p. 136, § 31.)

CHAPTER 22

CLINICAL LABORATORIES

Sec.		Sec.	
31-22-1.	Definitions.	31-22-9.	Applicability of chapter.
31-22-2.	Licenses.	31-22-9.1.	HIV tests — Who may perform test.
31-22-3.	Clinical Laboratory, Blood Bank, and Tissue Bank Committee [Repealed].	31-22-9.2.	HIV tests — Report of positive results; counseling; violations; exception for insurance coverage; exposure of health care provider.
31-22-4.	Examination of human specimens.	31-22-10.	Effect of this chapter on Chapter 23 of this title and Article 6 of Chapter 5 of Title 44.
31-22-5.	Methods for selection of blood donors and collection, storage, and processing of human blood.	31-22-11.	Effect of this chapter on Chapter 34 of Title 43.
31-22-6.	Powers of board to promulgate rules and regulations, establish and enforce standards.	31-22-12.	Injunction of operation of unlicensed clinical laboratories.
31-22-7.	Reports to department.	31-22-13.	Penalty.
31-22-8.	Inspections; evaluation program.		

31-22-1. Definitions.

As used in this chapter, the term:

(1) "Board" means the Board of Community Health.

(2) "Clinical laboratory" means a facility for the biological, microbiological, serological, chemical, immunohematological, hematological, biophysical, cytological, pathological, or other examination of materials derived from the human body for the diagnosis of, recommendation of treatment of, or for the purposes of providing information for the diagnosis, prevention, or treatment of any disease or impairment of, or the assessment of the health of human beings; the term "clinical laboratory" shall include specimen collection stations and shall include blood banks which provide through their ownership or operation a system for the collection, processing, or storage of human blood and its component parts as well as tissue banks which procure, store, or process human or animal tissues designed to be used for medical purposes in human beings.

(2.1) "Commissioner" means the commissioner of community health.

(2.2) "Department" means the Department of Community Health.

(3) "Director" means a person who is responsible for the administration of the technical and scientific operation of a clinical laboratory, including supervision of procedures for testing and the reporting of results.

(4) “Person” means any individual, firm, partnership, association, corporation, the state or any municipality or other subdivision thereof, or any other entity whether organized for profit or not.

(5) “Specimen collection station” means a place having the primary purpose of either collecting specimens directly from patients or bringing specimens together after collection for the purpose of forwarding them either intrastate or interstate to a clinical laboratory for examination.

(6) “Supervisor” means an assistant director and a person who, under the general supervision of a clinical laboratory director, supervises technical personnel and performs tests requiring special scientific skills.

(7) “Technician” means any person other than the clinical laboratory director, supervisor, technologist, or trainee who functions under the supervision of a clinical laboratory director, supervisor, or technologist and performs only those clinical laboratory procedures which require limited skill and responsibility and a minimal exercise of independent judgment. The degree of supervision by the clinical laboratory director, supervisor, or technologist of a technician shall be determined by the director, supervisor, or technologist based on:

- (A) The complexity of the procedure to be performed;
- (B) The training and capability of the technician; and
- (C) The demonstrated competence of the technician in the procedure being performed.

(8) “Technologist” means a person who performs tests which require the exercise of independent judgment and responsibility, with minimal supervision by the director or supervisor, in only those specialties or subspecialties in which he is qualified by education, training, and experience. (Ga. L. 1970, p. 531, § 2; Ga. L. 1971, p. 247, § 1; Ga. L. 1982, p. 1081, §§ 1, 2, 6, 7; Ga. L. 1991, p. 94, § 31; Ga. L. 1991, p. 349, § 1; Ga. L. 2005, p. 1190, § 1/SB 51; Ga. L. 2009, p. 453, § 1-5/HB 228; Ga. L. 2011, p. 705, § 4-16/HB 214.)

The 2011 amendment, effective July 1, 2011, added paragraphs (2.1) and (2.2). 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

Law reviews. — For article on the

JUDICIAL DECISIONS

Cited in *Sherrer v. Hale*, 248 Ga. 793, 285 S.E.2d 714 (1982).

RESEARCH REFERENCES

ALR. — Right of corporation to engage in business, trade, or activity requiring license from public, 165 ALR 1098.

31-22-2. Licenses.

(a) No clinical laboratory shall be operated without a license issued and in force pursuant to this chapter; provided, however, that the department may promulgate rules and regulations by which a facility or a part of a facility in which laboratory testing is done may qualify for exemption from licensure when only specific tests or techniques, designated by the department and used for screening and monitoring purposes only, are performed.

(b) Application for licenses shall be made to the Department of Community Health on forms prescribed by it. The application shall indicate the categories of procedures to be performed and shall contain such additional information as the department may require. Each application shall be accompanied by a nonrefundable fee prescribed by the department.

(c) The license applied for shall be issued if the department finds that all requirements are met or, in the case of a new clinical laboratory not yet in operation, that the owner is in a position to meet them. A license shall authorize the performance of one or more procedures or categories of procedures and shall be valid for one year from the date of issue unless sooner canceled, suspended, or revoked.

(d) A clinical laboratory license may be denied, revoked, suspended, limited, or renewal thereof denied on the following grounds:

(1) Making false statements of material information on an application for clinical laboratory license or any other documents required by the department;

(2) Permitting unauthorized persons to perform technical procedures or to issue or sign reports;

(3) Demonstrating incompetence in the performance or reporting of clinical laboratory examinations and procedures;

(4) Performing a test for or rendering a report to a person not authorized by law to receive such services;

(5) Referring a specimen for examination to a clinical laboratory in this state which has not been licensed pursuant to this chapter unless such referral laboratory is exempted from coverage of this chapter;

(6) Making a report on clinical laboratory work actually performed in another clinical laboratory without designating the name of the

director and the name and address of the clinical laboratory in which the test was performed;

(7) Lending the use of the name of the licensed clinical laboratory or its personnel to an unlicensed clinical laboratory;

(8) Violating or aiding in the violation of any provision of this chapter or the rules or regulations promulgated hereunder; or

(9) Violating any other provisions of law applicable to the proper operation of a clinical laboratory.

(e) Each clinical laboratory shall have a licensed director. An individual shall be permitted to direct no more than three clinical laboratories. No individual shall function as a director of a clinical laboratory unless he is a physician licensed to practice medicine and surgery pursuant to Chapter 34 of Title 43; provided, however, that the director of a clinical laboratory restricting its practice to dental pathology may be either a physician licensed to practice medicine and surgery or a dentist licensed to practice dentistry; provided, further, that the board may promulgate rules and regulations which authorize persons who possess doctorate degrees in biology, microbiology, and related fields to be directors of clinical laboratories when the proper circumstances and qualifications are present.

(f) A clinical laboratory license shall specify on the face thereof the names of the owner and director, procedures or categories of procedures authorized, the location at which such procedures are to be performed, and the period for which the license is valid. The license shall be displayed at all times in a prominent place where it may be viewed by the public.

(g) Licenses issued pursuant to this chapter shall be subject to renewal in accordance with rules and regulations of the department.

(h) The board shall fix and publish in print or electronically and from time to time revise schedules of fees for applications and renewals. Such fees for clinical laboratory licenses shall be in amounts calculated to defray the costs of necessary inspections, evaluations, and investigations related thereto.

(i) The board shall promulgate rules and regulations which specify minimum standards for laboratory supervisors; provided, however, that nothing in this chapter shall be construed to affect any director, supervisor, technologist, or technician who is holding any such position on July 1, 1970.

(j) For the purposes of licensure, specimen collection stations which have a parent clinical laboratory licensed by the State of Georgia may be considered by the department to be part of that laboratory. (Ga. L.

1970, p. 531, § 4; Ga. L. 1975, p. 737, § 2; Ga. L. 1982, p. 1081, §§ 3, 4, 8, 9; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2010, p. 838, § 10/SB 388.)

The 2010 amendment, effective June 3, 2010, inserted “in print or electronically” in the first sentence of subsection (h).

OPINIONS OF THE ATTORNEY GENERAL

Amount and disposition of licensure fees. — Fees for laboratory licenses must not exceed those amounts calculated to defray cost of inspecting, evaluating, and investigating nonexempt laboratories; all fees collected under licensure law must be paid into state treasury, and licensing program must be financed out of funds made available to department by General Assembly. 1970 Op. Att’y Gen. No. 70-140.

Subsection (e) enunciates qualifications for position of clinical director.

— Legislature desires to have directors licensed as clinical directors; provisions of this section enunciate certain qualifications needed for position of clinical director. 1970 Op. Att’y Gen. No. 70-140 (see O.C.G.A. § 31-22-2).

RESEARCH REFERENCES

ALR. — Failure to procure occupational or business license or permit as affecting validity or enforceability of contract, 30 ALR 834; 42 ALR 1226; 118 ALR 646.

Right to enjoin business competitor from unlicensed or otherwise illegal acts or practices, 90 ALR2d 7.

Recovery back of money paid to unlicensed person required by law to have occupational or business license or permit to make contract, 74 ALR3d 637.

Practices forbidden by state deceptive trade practice and consumer protection acts, 89 ALR3d 449.

31-22-3. Clinical Laboratory, Blood Bank, and Tissue Bank Committee.

Reserved. Repealed by Ga. L. 2012, p. 1132, § 2/SB 407, effective July 1, 2012.

Editor’s notes. — This Code section L. 1972, p. 1257, §§ 3-5; Ga. L. 1982, p. 2376, §§ 1, 2. was based on Ga. L. 1970, p. 531, § 8; Ga.

31-22-4. Examination of human specimens.

(a) A clinical laboratory shall examine human specimens only at the request of a licensed physician, dentist, or other person authorized by law to use the findings of laboratory examinations.

(b) All specimens accepted by a clinical laboratory shall be tested on the premises or in another laboratory or location under the responsibility of the director unless forwarded to another properly licensed clinical laboratory.

(c) The results of a test shall be reported only to or as directed by the licensed physician, dentist, or other authorized person requesting such

test. Such reports shall include the name of the director and the name and address of the clinical laboratory in which the test was performed.

(d) No person shall represent or maintain an office or specimen collection station or other facility for the representation of any clinical laboratory situated in this state or any other state which makes examinations in connection with the diagnosis and control of diseases unless the clinical laboratory so represented shall meet or exceed the minimum standards issued by the department pursuant to this chapter and the regulations issued under this chapter.

(e) The department may require laboratories to show evidence that specimens shipped through the mails and accepted by them for analysis are sufficiently stable for the determinations requested.

(f) Records involving clinical laboratory services and copies of reports of laboratory tests shall be kept for the period of time and in the manner prescribed by the department.

(g) Each clinical laboratory shall establish its own quality assurance program designed to ensure testing accuracy and in accordance with the rules and regulations promulgated by the department. The quality assurance program shall also include the use of, where applicable, calibration and control practices designed to ensure accurate and reliable test processes.

(h) Subsections (a) through (c) of this Code section shall not apply to the taking, examining, or testing of specimens by a clinical laboratory or its personnel solely in order to test the accuracy or sufficiency of its procedures or in order to make improvements in such procedures. (Ga. L. 1970, p. 531, § 5; Ga. L. 1985, p. 149, § 31; Ga. L. 1998, p. 1385, § 1.)

31-22-5. Methods for selection of blood donors and collection, storage, and processing of human blood.

(a) Those clinical laboratories which provide a system for the collection, processing, or storage of human blood and its component parts shall provide methods for the selection of blood donors as well as methods for the collection, storage, processing, and transfusion of blood, which shall ensure that the blood donation will not be detrimental to the donor and to protect the ultimate recipient of human blood or any of its component parts from infectious disease known to be transmissible by blood.

(b) The methods described in subsection (a) of this Code section shall conform to the most recent "Standards for Blood Banks and Transfusion Services" published by the American Association of Blood Banks; provided, however, that the board may modify the standards published by the American Association of Blood Banks by adopting separate or

supplementary rules and regulations to ensure that the blood donation will not be detrimental to the donor and will protect the ultimate recipient of human blood or any of its component parts from diseases known to be transmissible by blood. (Ga. L. 1972, p. 1247, § 2.)

Cross references. — Inapplicability of implied warranties to injection, transfusion, or other transfer of blood, blood plasma, or transplanting of tissue, bones, or organs, §§ 11-2-316, 51-1-28. Age at which person may donate blood without consent of parent or guardian, § 44-5-89.

Administrative rules and regulations. — Blood labeling, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Human Resources (now the Department of Community Health for these purposes), Public Health, Chapter 290-5-34.

JUDICIAL DECISIONS

Cited in Sanders v. Colquitt County Hosp. Auth., 180 Ga. App. 58, 348 S.E.2d 490 (1986).

RESEARCH REFERENCES

ALR. — Liability of hospital, physician, or other individual medical practitioner for injury or death resulting from blood transfusion, 20 ALR4th 136.

31-22-6. Powers of board to promulgate rules and regulations, establish and enforce standards.

In addition to powers conferred elsewhere in this chapter, the board shall:

- (1) Promulgate rules and regulations for the implementation of this chapter;
- (2) Establish and enforce standards governing the safety and sanitary requirements pertaining to clinical laboratories to the extent that they are not otherwise subject to requirements imposed by law or municipal ordinance; and
- (3) Promulgate rules and regulations relating to the qualifications and performance of all personnel. (Ga. L. 1970, p. 531, § 4; Ga. L. 1972, p. 1257, § 2; Ga. L. 2012, p. 1132, § 3/SB 407.)

The 2012 amendment, effective July 1, 2012, deleted “, after recommendations from the advisory committee authorized in Code Section 31-22-3” following “this chapter” in paragraph (1).

OPINIONS OF THE ATTORNEY GENERAL

Board of Health (now Board of Community Health) must implement clinical laboratory licensing law. 1970 Op. Att’y Gen. No. 70-140.

31-22-7. Reports to department.

(a) The department shall require reporting by clinical laboratories of evidence of such infectious diseases as the department may specify and shall furnish forms for such reporting. No clinical laboratory making reports shall be held liable for having violated a trust or confidential relationship. The reports submitted shall be deemed confidential and not subject to public inspection.

(b) Every director of a clinical laboratory shall report to the department such information regarding the operation of the clinical laboratory as the department by its rules and regulations may require in order to aid in the proper administration of this chapter. (Ga. L. 1970, p. 531, § 6.)

31-22-8. Inspections; evaluation program.

(a) The department shall make periodic inspections of every clinical laboratory, at its discretion. In lieu of or to supplement its own inspection program, the department may use results of inspections conducted by other accrediting agencies. For the purpose of this subsection, the employees or agents of the department shall have the right of entry into the premises of the laboratory during normal hours of operation.

(b) The department shall operate a clinical laboratory evaluation program and shall prescribe standards of performance in the examination of specimens. As part of the clinical laboratory evaluation program, the department may require the clinical laboratory to analyze test samples submitted or authorized by the department and report on the results of such analysis. (Ga. L. 1970, p. 531, § 7; Ga. L. 1975, p. 737, § 3; Ga. L. 1982, p. 1081, §§ 5, 10.)

RESEARCH REFERENCES

ALR. — Liability of owner or occupant of premises to building or construction inspector coming upon premises in discharge of duty, 28 ALR3d 891.

31-22-9. Applicability of chapter.

(a) This chapter shall not apply to clinical laboratories which are:

(1) Operated by the Georgia Health Sciences University, the Emory University School of Medicine, any other medical schools in Georgia, or the United States government;

(2) Operated and maintained exclusively for research and teaching purposes, involving no patient or public health services;

(3) Operated and maintained as part of a hospital regulated and licensed by the department at any period of time during which the department, as part of its licensure and regulation of such hospital, imposes upon the medical laboratory involved the same standards of administration, performance, and operation as are imposed by this chapter upon medical laboratories covered in this chapter. In such cases and under such conditions, licensure of the hospital involved constitutes licensure of the hospital laboratory; or

(4) Operated by duly licensed physicians exclusively in connection with the diagnosis and treatment of their own patients.

(b) This chapter shall not apply to pharmacists licensed pursuant to Chapter 4 of Title 26 practicing in accordance with the provisions thereof who are performing capillary blood tests and interpreting the results as a means to screen for or monitor disease risk factors and facilitate patient education as authorized in Code Section 26-4-4, so long as such capillary blood tests are available to and for use by the public without licensure of the user of the test. (Ga. L. 1970, p. 531, § 1; Ga. L. 1972, p. 1247, § 1; Ga. L. 1972, p. 1257, § 1; Ga. L. 1975, p. 737, § 1; Ga. L. 1976, p. 1362, § 1; Ga. L. 1985, p. 149, § 31; Ga. L. 2000, p. 226, § 1; Ga. L. 2011, p. 752, § 31/HB 142.)

The 2011 amendment, effective May 13, 2011, part of an Act to revise, modernize, and correct the Code, substituted “Georgia Health Sciences University” for “Medical College of Georgia” in paragraph (a)(1).

OPINIONS OF THE ATTORNEY GENERAL

Section effectively excludes Georgia Crime Laboratory from coverage.
1972 Op. Att’y Gen. No. U72-113.

31-22-9.1. HIV tests — Who may perform test.

(a) As used in this Code section, the term:

(1) “AIDS” means Acquired Immunodeficiency Syndrome or AIDS Related Complex within the reporting criteria of the department.

(2) “AIDS confidential information” means information which discloses that a person:

- (A) Has been diagnosed as having AIDS;
- (B) Has been or is being treated for AIDS;
- (C) Has been determined to be infected with HIV;
- (D) Has submitted to an HIV test;
- (E) Has had a positive or negative result from an HIV test;

(F) Has sought and received counseling regarding AIDS; or

(G) Has been determined to be a person at risk of being infected with AIDS,

and which permits the identification of that person.

(3) "AIDS transmitting crime" means any of the following offenses specified in Title 16:

(A) Rape;

(B) Sodomy;

(C) Aggravated sodomy;

(D) Child molestation;

(E) Aggravated child molestation;

(F) Prostitution;

(G) Solicitation of sodomy;

(H) Incest;

(I) Statutory rape; or

(J) Any offense involving a violation of Article 2 of Chapter 13 of Title 16, regarding controlled substances, if that offense involves heroin, cocaine, derivatives of either, or any other controlled substance in Schedule I, II, III, IV, or V and that other substance is commonly intravenously injected, as determined by the regulations of the department.

(4) "Body fluids" means blood, semen, or vaginal secretions.

(5) "Confirmed positive HIV test" means the results of at least two separate types of HIV tests, both of which indicate the presence of HIV in the substance tested thereby.

(6) "Counseling" means providing the person with information and explanations medically appropriate for that person which may include all or part of the following: accurate information regarding AIDS and HIV; an explanation of behaviors that reduce the risk of transmitting AIDS and HIV; an explanation of the confidentiality of information relating to AIDS diagnoses and HIV tests; an explanation of information regarding both social and medical implications of HIV tests; and disclosure of commonly recognized treatment or treatments for AIDS and HIV. The Department of Public Health shall develop brochures or other documents which meet the requirements of this paragraph and, upon delivery of such a brochure or document or of another brochure or document approved by the Department of Public Health to the person and referral of that person to the

Department of Public Health for further information and explanations, counseling shall be deemed to have been provided within the meaning of this paragraph.

(7) "Determined to be infected with HIV" means having a confirmed positive HIV test or having been clinically diagnosed as having AIDS.

(8) "Health care facility" means any:

(A) Institution or medical facility, as defined in Code Section 31-7-1;

(B) Facility for mentally ill persons or persons with developmental disabilities, as such terms are defined in Code Section 37-1-1, or alcoholic or drug dependent persons, as defined in Code Section 37-7-1;

(C) Medical, dental, osteopathic, or podiatric clinic;

(D) Hospice, as defined in Code Section 31-7-172;

(E) Clinical laboratory, as defined in Code Section 31-22-1; or

(F) Administrative, clerical, or support personnel of any legal entity specified in subparagraphs (A) through (E) of this paragraph.

(9) "Health care provider" means any of the following persons licensed or regulated by the state:

(A) Physician or physician assistant;

(B) Osteopath;

(C) Podiatrist;

(D) Midwife;

(E) Dentist, dental technician, or dental hygienist;

(F) Respiratory care professional, certified respiratory therapy technician, or registered respiratory therapist;

(G) Registered nurse;

(H) Licensed practical nurse;

(I) Emergency medical technician, paramedic, or cardiac technician;

(J) Clinical laboratory director, supervisor, technician, or technologist;

(K) Funeral director or embalmer;

(L) Member of a hospice team, as defined in Code Section 31-7-172;

(M) Nursing home administrator;

(N) Professional counselor, social worker, or marriage and family therapist;

(O) Psychologist;

(P) Administrative, clerical, or support personnel, whether or not they are licensed or regulated by the state, of any person specified in subparagraphs (A) through (O) of this paragraph;

(Q) Trainee, student, or intern, whether or not they are licensed or regulated by the state, of any persons listed in subparagraphs (A) through (O) of this paragraph; or

(R) First responder, as defined in Chapter 11 of this title, although such person is not licensed or regulated by the state.

(10) "HIV" means any type of Human Immunodeficiency Virus, Human T-Cell Lymphotropic Virus Types III or IV, Lymphadenopathy Associated Virus Types I or II, AIDS Related Virus, or any other identified causative agent of AIDS.

(11) "HIV infected person" means a person who has been determined to be infected with HIV, whether or not that person has AIDS, or who has been clinically diagnosed as having AIDS.

(12) "HIV test" means any antibody, antigen, viral particle, viral culture, or other test to indicate the presence of HIV in the human body, which test has been approved for such purposes by the regulations of the department.

(13) "Institutional care facility" means any:

(A) Health care facility;

(B) Child welfare agency, as defined in Code Section 49-5-12;

(C) Group care facility, as defined in Code Section 49-5-3;

(D) Penal institution; or

(E) Military unit.

(14) "Knowledge of being infected with HIV" means actual knowledge of:

(A) A confirmed positive HIV test; or

(B) A clinical diagnosis of AIDS.

(15) "Law" means federal or state law.

(16) "Legal entity" means a partnership, association, joint venture, trust, governmental entity, public or private corporation, health care facility, institutional care facility, or any other similar entity.

(17) "Military unit" means the smallest organizational unit of the organized militia of the state, as defined in Code Section 38-2-2, or of any branch of the armed forces of the United States, which unit is commanded by a commissioned officer.

(18) "Penal institution" means any jail, correctional institution, or similar facility for the detention of violators of state laws or local ordinances.

(19) "Person" means a natural person.

(20) "Person at risk of being infected with HIV" means any person who may have already come in contact with or who may in the future reasonably be expected to come in contact with the body fluids of an HIV infected person.

(21) "Physician" means any person licensed to practice medicine under Chapter 34 of Title 43.

(22) "Public safety agency" means that governmental unit which directly employs a public safety employee.

(23) "Public safety employee" means an emergency medical technician, firefighter, law enforcement officer, or prison guard, as such terms are defined in Code Section 45-9-81, relating to indemnification of such personnel for death or disability.

(b) Notwithstanding the provisions of Code Section 31-21-10 and Code Section 31-22-11, no person or legal entity, other than an insurer authorized to transact business in this state, shall submit for an HIV test any human body fluid or tissue to any person or legal entity except to:

(1) A clinical laboratory licensed under this chapter;

(2) A clinical laboratory exempt from licensure under Code Section 31-22-9; or

(3) A clinical laboratory licensed as such pursuant to the laws of any other state.

(c) No person or legal entity may sell or offer for sale any HIV test that permits any person or legal entity, including the person whose body fluids are to be tested, to perform that test other than a person or legal entity specified in paragraphs (1) through (3) of subsection (b) of this Code section. (Code 1981, § 31-22-9.1, enacted by Ga. L. 1988, p. 1799, § 8; Ga. L. 1989, p. 14, § 31; Ga. L. 2002, p. 660, § 4; Ga. L. 2002, p. 1259, § 11; Ga. L. 2009, p. 453, §§ 1-4, 3-5/HB 228; Ga. L. 2009, p.

859, § 3/HB 509; Ga. L. 2011, p. 337, § 10/HB 324; Ga. L. 2011, p. 705, § 6-3/HB 214.)

The 2011 amendments. — The first 2011 amendment, effective July 1, 2011, substituted the present provisions of subparagraph (a)(8)(B) for the former provisions, which read: “Facility for the mentally ill, developmentally disabled, or alcoholic or drug dependent persons, as defined in Code Sections 37-3-1, 37-4-2, and 37-7-1, respectively.” The second 2011 amendment, effective July 1, 2011, substituted “Department of Public Health” for “Department of Community Health” three times in the last sentence of paragraph (a)(6).

Cross references. — Confidential nature of AIDS information, § 24-12-20.

Editor’s notes. — Ga. L. 1988, p. 1799, § 1, not codified by the General Assembly, provides: “The General Assembly finds that Acquired Immunodeficiency Syndrome (AIDS) and its causative agent, including Human Immunodeficiency Virus (HIV), pose a grave threat to the health, safety, and welfare of the people of this state. In the absence of any effective vaccination or treatment for this disease, it threatens almost certain death to all who contract it. The disease is largely transmitted through sexual contacts and intravenous drug use, not through casual contact, and, while deadly, is therefore

preventable. The key component of the fight against AIDS is education. Through public education and counseling our citizens can learn how the disease is transmitted and, thus, how to protect themselves and prevent its spread. The Department of Human Resources is encouraged to continue its efforts to educate all Georgians about the disease, its causative agent, and its means of transmission. In addition, voluntary testing should be encouraged for anyone who feels at risk of infection. While education, counseling, and voluntary testing are vital to the elimination of this epidemic, other measures are needed to protect the health of our citizens, and it is the intention of the General Assembly to enact such measures in the exercise of its police powers in order to deal with AIDS and HIV infection.”

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1988, “counselor, social worker, or marriage and family therapist” was substituted for “counselors, social workers, or marriage and family therapists” in subparagraph (a)(9)(N) and “Trainee, student, or intern” was substituted for “Trainees, students, or interns” in subparagraph (a)(9)(Q).

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

31-22-9.2. HIV tests — Report of positive results; counseling; violations; exception for insurance coverage; exposure of health care provider.

(a) Any term used in this Code section and defined in Code Section 31-22-9.1 shall have the meaning provided for that term in Code Section 31-22-9.1.

(b) Reserved.

(c) Unless exempted under this Code section, each health care provider who orders an HIV test for any person shall do so only after counseling the person to be tested. Unless exempted under this subsection, the person to be tested shall have the opportunity to refuse the test. The provisions of this subsection shall not be required if the person is required to submit to an HIV test pursuant to Code Section 15-11-66.1, 17-10-15, 31-17-4.2, 31-17A-3, 42-5-52.1, or 42-9-42.1. The

provisions of this subsection shall not be required if the person is a minor or incompetent and the parent or guardian thereof permits the test after compliance with this subsection. The provisions of this subsection shall not be required if the person is unconscious, temporarily incompetent, or comatose and the next of kin permits the test after compliance with this subsection. The provisions of this subsection shall not apply to emergency or life-threatening situations. The provisions of this subsection shall not apply if the physician ordering the test is of the opinion that the person to be tested is in such a medical or emotional state that disclosure of the test would be injurious to the person's health. The provisions of this subsection shall only be required prior to drawing the body fluids required for the HIV test and shall not be required for each test performed upon that fluid sample.

(d) The health care provider ordering an HIV test shall provide medically appropriate counseling to the person tested with regard to the test results. Such medically appropriate counseling shall only be required when the last confirmatory test has been completed.

(e) The criminal penalty provided in Code Section 31-22-13 shall not apply to a violation of subsection (c), (d), or (g) of this Code section. The statute of limitations for any action alleging a violation of this Code section shall be two years from the date of the alleged violation.

(f) The provisions of this Code section shall not apply to situations in which an HIV test is ordered or required in connection with insurance coverage, provided that the person to be tested or the appropriate representative of that person has agreed to have the test administered under such procedures as may be established by the Commissioner of Insurance after consultation with the Department of Community Health.

(g) Notwithstanding the other provisions of this Code section, when exposure of a health care provider to any body fluids of a patient occurs in such a manner as to create any risk that such provider might become an HIV infected person if the patient were an HIV infected person, according to current infectious disease guidelines of the Centers for Disease Control and Prevention or according to infectious disease standards of the health care facility where the exposure occurred, a health care provider otherwise authorized to order an HIV test shall be authorized to order any HIV test on such patient and obtain the results thereof:

(1) If the patient or the patient's representative, if the patient is a minor, otherwise incompetent, or unconscious, does not refuse the test after being notified that the test is to be ordered and after having been provided counseling and an opportunity to refuse the test; or

(2) If the patient or representative refuses the test, following compliance with paragraph (1) of this subsection, when at least one

other health care provider who is otherwise authorized to order an HIV test concurs in writing to the testing, the patient is informed of the results of the test and is provided counseling with regard to those results, and the occurrence of that test is not made a part of the patient's medical records, where the test results are negative, without the patient's consent. (Code 1981, § 31-22-9.2, enacted by Ga. L. 1988, p. 1799, § 8; Ga. L. 1990, p. 705, §§ 2, 3; Ga. L. 2000, p. 20, § 20; Ga. L. 2006, p. 72, § 31/SB 465; Ga. L. 2007, p. 173, § 2/HB 429; Ga. L. 2009, p. 453, § 1-4/HB 228.)

Cross references. — HIV pregnancy screening, § 31-17-4.2. Control of HIV, T. 31, C. 17A.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2004, subsection (b) was reserved.

Editor's notes. — Ga. L. 1988, p. 1799, § 1, not codified by the General Assembly, provides: "The General Assembly finds that Acquired Immunodeficiency Syndrome (AIDS) and its causative agent, including Human Immunodeficiency Virus (HIV), pose a grave threat to the health, safety, and welfare of the people of this state. In the absence of any effective vaccination or treatment for this disease, it threatens almost certain death to all who contract it. The disease is largely transmitted through sexual contacts and intravenous drug use, not through casual contact, and, while deadly, is therefore preventable. The key component of the fight against AIDS is education. Through public education and counseling our citizens can learn how the disease is transmitted and, thus, how to protect themselves and prevent its spread. The Department of Human Resources is encouraged to continue its efforts to educate

all Georgians about the disease, its causative agent, and its means of transmission. In addition, voluntary testing should be encouraged for anyone who feels at risk of infection. While education, counseling, and voluntary testing are vital to the elimination of this epidemic, other measures are needed to protect the health of our citizens, and it is the intention of the General Assembly to enact such measures in the exercise of its police powers in order to deal with AIDS and HIV infection."

Former subsection (b) was repealed by its own terms effective December 31, 2003.

Administrative rules and regulations. — Medical or life-style questions on applications and underwriting guidelines affecting AIDS and ARC, Official Compilation of the Rules and Regulations of the State of Georgia, Comptroller General, Office of Commissioner of Insurance, Chapter 120-2-43.

Law reviews. — For note on 1990 amendment of this Code section, see 7 Ga. St. U.L. Rev. 312 (1990).

For comment, "AIDS: Balancing the Physician's Duty to Warn and Confidentiality Concerns," see 38 Emory L.J. 280 (1989).

RESEARCH REFERENCES

Am. Jur. 2d. — 37A Am. Jur. 2d, Freedom of Information Act, § 36 et seq.

ALR. — Damage action for HIV testing

without consent of person tested, 77 ALR5th 541.

31-22-10. Effect of this chapter on Chapter 23 of this title and Article 6 of Chapter 5 of Title 44.

Nothing contained in this chapter shall be deemed or construed as affecting or repealing Chapter 23 of this title or Article 6 of Chapter 5 of Title 44. (Ga. L. 1972, p. 1247, § 3.)

31-22-11. Effect of this chapter on Chapter 34 of Title 43.

Nothing contained in this chapter shall be deemed or construed as affecting or repealing Chapter 34 of Title 43. (Ga. L. 1972, p. 1257, § 6.)

31-22-12. Injunction of operation of unlicensed clinical laboratories.

The operation or maintenance of an unlicensed clinical laboratory in violation of this chapter is declared a nuisance, inimical to the public health, welfare, and safety. The commissioner in the name of the people of the state through the Attorney General may, in addition to other remedies provided in this chapter, bring an action for an injunction to restrain such violation or to enjoin the future operation or maintenance of any such clinical laboratory until compliance with this chapter or the rules or regulations promulgated under this chapter has been demonstrated to the satisfaction of the department. (Ga. L. 1970, p. 531, § 10; Ga. L. 1985, p. 149, § 31.)

31-22-13. Penalty.

Any person who violates any provision of this chapter or any of the rules and regulations promulgated pursuant thereto shall be guilty of a misdemeanor. (Ga. L. 1970, p. 531, § 9.)

CHAPTER 23

EYE BANKS

Sec.		Sec.	
31-23-1.	Definitions.		ability of persons operating eye banks or having custody or control of donor's body.
31-23-2.	Effect on eye donations of the "Georgia Revised Uniform Anatomical Gift Act."	31-23-6.	Removal of eye or corneal tissue [Repealed].
31-23-3.	Hospitals or medical schools which may operate eye banks; right of eye banks to receive gifts, donations, and bequests.	31-23-7.	Liability of donor or donor's estate.
31-23-4.	Powers of department.	31-23-8.	Effect of chapter upon existing methods of treatment or instruction.
31-23-5.	Persons authorized to extract eyes; compensation therefor; li-	31-23-9.	Penalty.

Cross references. — Anatomical gifts, § 44-5-140 et seq.

Administrative rules and regulations. — Eye banks in Georgia, Official Compilation of the Rules and Regulations

of the State of Georgia, Department of Human Resources (now the Department of Community Health for these purposes), Public Health, Chapter 290-5-7.

31-23-1. Definitions.

As used in this chapter, the term:

(1) "Department" means the Department of Community Health.

(2) "Eye bank" means a nonprofit facility which is maintained and operated for the extraction, removal, care, storage, preservation, and use of human eyes or parts thereof for purposes of sight preservation or restoration, medical education, instruction pertaining to sight preservation or restoration, or research, which facility is operated by, under, or in affiliation with a hospital for the care of human beings or a medical school in conjunction with the department or school of ophthalmology of such medical school.

(3) "Person" means any individual, firm, partnership, corporation, trustee, association, or combination thereof. (Ga. L. 1961, p. 582, § 1; Code 1933, § 88-2001, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1982, p. 1499, § 1; Ga. L. 1999, p. 832, § 1; Ga. L. 2011, p. 705, § 4-17/HB 214.)

The 2011 amendment, effective July 1, 2011, added paragraph (1); and redesignated former paragraphs (1) and (2) as present paragraphs (2) and (3), respectively.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

31-23-2. Effect on eye donations of the “Georgia Revised Uniform Anatomical Gift Act.”

Any donation of a person’s eyes or any part thereof shall be made in accordance with Article 6 of Chapter 5 of Title 44, the “Georgia Revised Uniform Anatomical Gift Act.” (Ga. L. 1961, p. 582, §§ 3, 4; Code 1933, §§ 88-2003, 88-2004, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 2008, p. 503, § 4/SB 405.)

31-23-3. Hospitals or medical schools which may operate eye banks; right of eye banks to receive gifts, donations, and bequests.

Any facility, hospital, or any medical school in conjunction with the department or school of ophthalmology of such medical school, alone or in further conjunction with other charitable organizations, may establish and maintain an eye bank in, under, or in affiliation with such hospital or medical school upon approval for the establishment of the eye bank by the Department of Community Health, if the eye bank meets the medical standards approved by the Eye Bank Association of America and such facility, hospital, or medical school is a nonprofit organization and is not a subsidiary of a for profit corporation or business entity. Upon the establishment of any eye bank as authorized in this Code section, the extraction, removal, care, preservation, storage, and use of human eyes or parts thereof for any of the purposes for which eye banks may be established may begin in such facility or as authorized by such facility. The eye bank shall have the right to receive gifts, donations, and bequests for the purposes stated in this Code section. (Ga. L. 1961, p. 582, § 2; Code 1933, § 88-2002, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1982, p. 1499, § 2; Ga. L. 1999, p. 832, § 2; Ga. L. 2003, p. 368, § 1; Ga. L. 2009, p. 453, § 1-4/HB 228.)

Law reviews. — For survey article on administration, see 59 Mercer L. Rev. 447 wills, trusts, guardianships, and fiduciary (2007).

31-23-4. Powers of department.

The department is empowered to approve or disapprove the establishment of an eye bank by any group desiring to establish one in accordance with rules and regulations adopted by the department; to exercise such control, inspection, and supervision of established eye banks as the department determines to be proper; and to terminate, for good cause, its approval of the maintenance and operation of an eye bank. (Ga. L. 1961, p. 582, § 7; Code 1933, § 88-2007, enacted by Ga. L. 1964, p. 499, § 1.)

31-23-5. Persons authorized to extract eyes; compensation therefor; liability of persons operating eye banks or having custody or control of donor's body.

(a) Upon the death of any donor, the persons holding a donor's unrevoked instrument of donation and maintaining and operating the donee eye bank may authorize any physician, or any embalmer licensed under Article 1 of Chapter 18 of Title 43, as now or hereafter amended, who has completed a course of training in eye extraction approved by the department, or any technician trained by and authorized by the eye bank to extract and remove the donated eyes or parts thereof for the eye bank in accordance with sound medical practices.

(b) The person or persons extracting and removing the donated eyes or parts thereof shall receive no compensation for such services other than that established, approved, and paid by the persons maintaining and operating the eye bank.

(c) Neither persons maintaining and operating eye banks, nor their agents, nor persons having custody or control of a deceased donor's body shall be liable criminally or civilly to any person or any person's estate for the removal of eyes or parts thereof donated and removed in accordance with this chapter. (Ga. L. 1961, p. 582, § 5; Code 1933, § 88-2005, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1972, p. 234, § 1; Ga. L. 1976, p. 1559, § 1; Ga. L. 1982, p. 1499, § 3; Ga. L. 1992, p. 6, § 31.)

31-23-6. Removal of eye or corneal tissue.

Reserved. Repealed by Ga. L. 2008, p. 503, § 3/SB 405, effective July 1, 2008.

Editor's notes. — This Code section 1980, p. 1328, § 1; Ga. L. 1981, p. 611, was based on Code 1933, § 88-2010, enacted by Ga. L. 1978, p. 811, § 1; Ga. L. 1982, p. 3, § 31; Ga. L. 1991, p. 94, § 31.

31-23-7. Liability of donor or donor's estate.

In no event shall any donor or donor's estate incur any liability for any expense connected with or resulting from the donation, extraction, removal, care, preservation, storage, or use of such donor's eyes or parts thereof. (Ga. L. 1961, p. 582, § 6; Code 1933, § 88-2006, enacted by Ga. L. 1964, p. 499, § 1.)

31-23-8. Effect of chapter upon existing methods of treatment or instruction.

Nothing in this chapter shall affect, interfere with, or change presently existing methods of the medical or scientific operation, treatment,

examination, or instruction pertaining to the eyes of human beings as the same is now carried on in the hospitals or under the medical schools of this state. (Ga. L. 1961, p. 582, § 8; Code 1933, § 88-2008, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1982, p. 1499, § 4.)

31-23-9. Penalty.

(a) It shall be unlawful:

(1) For any person to sell either his eyes or any parts thereof or the eyes or any parts thereof of another person or to receive any remuneration for the giving of a human eye or any part thereof;

(2) For the person or persons operating and maintaining any eye bank to sell any donated eye or donated part thereof or knowingly to extract, remove, or take possession of any human eye or part thereof for which any person received compensation or remuneration; or

(3) For any person or persons to establish or operate any eye bank without approval of the department or otherwise not in accordance with this chapter.

(b) Any person who violates any provision of this Code section shall be guilty of a misdemeanor. (Ga. L. 1961, p. 582, § 9; Code 1933, § 88-2009, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1982, p. 1499, § 5.)

JUDICIAL DECISIONS

Action for damage to a corpse. — In an action regarding the alleged removal of eye tissue from a corpse without permission, even if the corneal tissue held pecu-

niary value, plaintiff could not sue for its recovery on the basis of contract. *Bauer v. North Fulton Medical Ctr., Inc.*, 241 Ga. App. 568, 527 S.E.2d 240 (1999).

RESEARCH REFERENCES

Am. Jur. 2d. — 22A Am. Jur. 2d, Dead Bodies, §§ 38, 42, 81.

C.J.S. — 25A C.J.S., Dead Bodies, § 27 et seq.

CHAPTER 24

BLOOD LABELING

Sec.		Sec.	
31-24-1.	Short title.		identification of blood administered by transfusion.
31-24-2.	Definitions.		
31-24-3.	Requirement of qualification of blood donors.	31-24-6.	Transfer of blood and blood components for industrial use.
31-24-4.	Labeling of containers of blood.	31-24-7.	Administration of chapter.
31-24-5.	Transfusion of unlabeled blood;	31-24-8.	Penalty.

Cross references. — Inapplicability of implied warranties to injection, transfusion, or other transfer of blood, blood plasma, or transplanting of tissue, bones, or organs, §§ 11-2-316, 51-1-28. Methods for selection of blood donors and collection of blood, § 31-22-5.

Administrative rules and regulations. — Blood labeling, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Human Resources (now the Department of Community Health for these purposes), Public Health, Chapter 290-5-34.

RESEARCH REFERENCES

Am. Jur. Trials. — Transfusion-Associated AIDS Litigation, 58 Am. Jur. Trials 1.

31-24-1. Short title.

This chapter shall be known and may be cited as "The Blood Labeling Act." (Ga. L. 1976, p. 353, § 1.)

31-24-2. Definitions.

As used in this chapter, the term:

(1) "Blood" means whole human blood, packed red blood cells, blood platelets, concentrated leucocytes, and blood plasma. It does not include blood derivatives manufactured or processed for industrial use.

(2) "Donation" means any transaction involving the person from whom blood is withdrawn, whether he presents himself for the withdrawal of blood on his own initiative or on the initiative of another person, in which he receives no consideration other than credit through blood assurance programs or other intangible benefits.

(3) "Industrial use" means a use of blood in which the blood is modified by physical or chemical means to produce derivatives for

therapeutic or pharmaceutical biologicals and laboratory reagents or controls.

(4) “Person” means any individual, blood bank, clinical laboratory, hospital, firm, corporation, or any other entity.

(5) “Purchase” means any transaction involving the person from whom blood is withdrawn, whether he presents himself for the withdrawal of blood on his own initiative or on the initiative of another person, in which he receives a monetary consideration in any form. Time off from work granted by an employer for the purpose of giving blood shall not be considered a direct monetary consideration.

(6) “Transfusion” means a use of blood in which the blood is administered to a human being for treatment of sickness or injury. (Ga. L. 1976, p. 353, § 2.)

31-24-3. Requirement of qualification of blood donors.

No blood may be withdrawn from any individual in this state for transfusion or industrial uses unless he qualifies to be a blood donor under the laws of this state. (Ga. L. 1976, p. 353, § 3.)

Cross references. — Age at which person may donate blood without consent of parent or guardian, § 44-5-89.

RESEARCH REFERENCES

ALR. — Liability of blood supplier or donor for injury or death resulting from blood transfusion, 24 ALR4th 508.

31-24-4. Labeling of containers of blood.

(a) Every person who withdraws blood from an individual or separates blood into components by physical processes shall affix to each container of such blood or components a label in a form specified by the Department of Public Health which shall include an indication of whether the blood was obtained by purchase or donation.

(b) The director of any blood bank who obtains blood in this state from a federally licensed blood bank in another state may label such blood as donated blood if he can legally certify to that fact. If he cannot make such certification, he shall label the blood as blood acquired by purchase. (Ga. L. 1976, p. 353, § 4; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214.)

The 2011 amendment, effective July 1, 2011, substituted “Department of Public Health” for “Department of Community Health” in subsection (a).

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

31-24-5. Transfusion of unlabeled blood; identification of blood administered by transfusion.

(a) No person may administer blood by transfusion in this state or transfer or offer to transfer blood for transfusion purposes by any type of transaction unless the container of such blood is labeled as required by Code Section 31-24-4.

(b) When blood is administered by transfusion in this state, the identification number of the unit of blood shall be recorded in the patient's medical record, and the label on the container of such blood may not be removed before or during the administration of that blood by transfusion. (Ga. L. 1976, p. 353, § 5.)

31-24-6. Transfer of blood and blood components for industrial use.

Blood and blood components, including salvage plasma, may be used and transferred for industrial uses without regard to whether its original acquisition was by purchase or donation. (Ga. L. 1976, p. 353, § 6.)

31-24-7. Administration of chapter.

The department shall administer this chapter as a part of and using the procedures of Chapter 22 of this title. (Ga. L. 1976, p. 353, § 7.)

31-24-8. Penalty.

Any person who violates any provision of this chapter shall be guilty of a misdemeanor. (Ga. L. 1976, p. 353, § 8.)

RESEARCH REFERENCES

ALR. — Liability of blood supplier or donor for injury or death resulting from blood transfusion, 24 ALR4th 508. required Immune Deficiency Syndrome (AIDS) from blood transfusion, 64 ALR5th 333.
Liability for donee's contraction of Ac-

CHAPTER 25

ARTICLES OF BEDDING

Sec.

31-25-1 through 31-25-13 [Repealed].

31-25-1 through 31-25-13.

Reserved. Repealed by Ga. L. 1997, p. 1339, § 1, effective July 1, 1997.

Editor's notes. — This chapter consisted of Code Sections 31-25-1 through 31-25-13, relating to articles of bedding, and was based on Ga. L. 1937, p. 719, §§ 1-7, 9, 11, 13; Code 1933, §§ 88-801—88-817, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1972, p. 1015, § 503; Ga. L. 1985, p. 149, § 31; Ga. L. 1991, p. 94 § 31.

CHAPTER 26

PRACTICE OF MIDWIFERY

Sec.		Sec.	
31-26-1.	Definitions.	31-26-5.	Attendance at other than normal childbirth; prohibited procedures; conduct in event of complications.
31-26-2.	Requirement of certificate; application; educational requirements; issuance, suspension, and revocation.	31-26-6.	Enforcement.
31-26-3.	Rules and regulations.	31-26-7.	Injunctive relief of violations.
31-26-4.	Conduct prohibited of certificate holders.		

Administrative rules and regulations. — Midwifery, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Human Resources (now the Department of Community Health for these purposes), Public Health, Chapter 290-5-15.

RESEARCH REFERENCES

ALR. — Midwifery: state regulation, 59 ALR4th 929.

31-26-1. Definitions.

As used in this chapter, the term:

(1) “Midwife” means any person not licensed under the laws of this state to practice obstetrics who is regularly engaged in attending women in childbirth or who holds himself or herself out as such, whether or not for consideration.

(2) “Normal childbirth” means delivery, at or close to term, of a pregnant woman whose physical examination by a physician reveals no abnormalities and who does not have signs or symptoms of hemorrhage, toxemia, infection, abnormal position or presentation, or prolonged labor.

(3) “Practice of midwifery” means and includes any act or practice of attending women in childbirth when engaged in by a midwife, whether or not for consideration. (Ga. L. 1955, p. 252, § 1; Code 1933, § 88-1401, enacted by Ga. L. 1964, p. 499, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers, §§ 21, 47. **C.J.S.** — 70 C.J.S., Physicians, Surgeons, and Other Health Care Providers, §§ 1 et seq., 15 et seq.

31-26-2. Requirement of certificate; application; educational requirements; issuance, suspension, and revocation.

(a) No person shall practice midwifery without first receiving from the Department of Public Health a certificate of authority as provided in this Code section and registering his or her name, address, and occupation with the county board of health and the local registrar, as defined in Code Section 31-10-2, of vital statistics in the county and district in which he or she lives.

(b) Persons desiring to enter into or continue the practice of midwifery shall make written application to the department through the county board of health in the county of their residence. All applicants for permits to practice midwifery shall be of good character and sound mind, shall be free of tuberculosis, venereal diseases, and other communicable diseases in the infectious stage, and shall be protected against smallpox.

(c) In order to become eligible for a certificate of authority to practice midwifery, applicants shall attend classes and satisfactorily complete courses of instruction therein to be prescribed by the department and shall pass an examination covering such courses. Such applicants shall also pass such physical examinations or, in the alternative, provide such evidence with regard to their personal health as the department may require.

(d) The department or any county board of health designated by the department shall issue, or refuse to issue, or, having issued, may suspend or revoke certificates of authority to practice midwifery under and in accordance with this chapter and such rules and regulations as may be issued and promulgated under this chapter. Certificates issued under this chapter shall be renewable annually at such time and in such manner as prescribed by the department. Suspension and revocation of certificates shall be subject to the administrative procedures contained in Article 1 of Chapter 5 of this title. (Ga. L. 1955, p. 252, §§ 2-5; Code 1933, §§ 88-1402, 88-1403, 88-1404, 88-1405, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1991, p. 94, § 31; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214.)

The 2011 amendment, effective July 1, 2011, substituted “Department of Public Health” for “Department of Community Health” in subsection (a).

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

RESEARCH REFERENCES

Am. Jur. 2d. — 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers, §§ 21, 47.

C.J.S. — 70 C.J.S., Physicians, Surgeons, and Other Health Care Providers, § 15 et seq.

31-26-3. Rules and regulations.

The department shall have the authority and power to adopt and promulgate such rules and regulations as may appear necessary and proper to carry out the purposes of this chapter, including, but not limited to, minimum educational and physical requirements for midwives and procedures and techniques to be employed and ethics to be observed in the practice of midwifery. The several county boards of health shall have the authority and power to adopt and promulgate supplementary rules and regulations consistent with those adopted and promulgated by the department. (Ga. L. 1955, p. 252, § 7; Code 1933, § 88-1406, enacted by Ga. L. 1964, p. 499, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers, §§ 21, 47.

C.J.S. — 70 C.J.S., Physicians, Surgeons, and Other Health Care Providers, § 15 et seq.

31-26-4. Conduct prohibited of certificate holders.

A certificate issued under this chapter shall not confer upon any person the right to practice medicine; to prescribe or administer drugs; to undertake charge of abnormal cases of confinement or of any disease in connection with confinement; or to assume any name, title, or designation implying that such person is authorized by law to undertake charge of any such cases, or to practice medicine, or to administer drugs. (Ga. L. 1955, p. 252, § 8; Code 1933, § 88-1407, enacted by Ga. L. 1964, p. 499, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers, §§ 21, 47.

C.J.S. — 70 C.J.S., Physicians, Surgeons, and Other Health Care Providers, § 15 et seq.

31-26-5. Attendance at other than normal childbirth; prohibited procedures; conduct in event of complications.

It shall be unlawful for any person holding a certificate as a midwife to attend any cases other than those of normal childbirth or to perform any internal examinations or manipulations of any kind. In all cases in which the child is not delivered spontaneously within a reasonable time, the midwife shall notify a qualified physician immediately and shall make no effort to deliver the child except under direction and supervision of such physician. (Ga. L. 1955, p. 252, § 9; Code 1933, § 88-1408, enacted by Ga. L. 1964, p. 499, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers, §§ 21, 47.

C.J.S. — 70 C.J.S., Physicians, Surgeons, and Other Health Care Providers, § 15 et seq.

31-26-6. Enforcement.

The department and county boards of health and their duly authorized agents are authorized and empowered to enforce compliance with this chapter and rules and regulations adopted and promulgated under this chapter, as provided in Article 1 of Chapter 5 of this title. (Ga. L. 1955, p. 252, § 10; Code 1933, § 88-1409, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1985, p. 149, § 31.)

31-26-7. Injunctive relief of violations.

Any violation of this chapter or any rules and regulations adopted and promulgated under this chapter is declared to be a public nuisance subject to abatement as provided in Code Section 31-5-9. (Ga. L. 1955, p. 252, § 11; Code 1933, § 88-1410, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1985, p. 149, § 31.)

CHAPTER 27

CONTROL OF MASS GATHERINGS

Sec.		Sec.	
31-27-1.	Definitions.	31-27-7.	Emergency powers of Governor; authority of director of Civil Defense Division.
31-27-2.	Permit requirement.	31-27-8.	Recovery by state for costs and damages.
31-27-3.	Application for permit.	31-27-9.	Rules and regulations.
31-27-4.	Additional requirements for issuance of permit; denial, suspension, or revocation.	31-27-10.	Applicability of chapter.
31-27-5.	Bond requirement; cash deposit in lieu of bond.	31-27-11.	Civil penalty.
31-27-6.	Assessment for persons in attendance beyond number specified.	31-27-12.	Criminal penalty.

Cross references. — Regulation of operators of motor vehicle racetracks, T. 43, C. 25.

Administrative rules and regulations. — Mass gatherings, Official Com-

pilation of the Rules and Regulations of the State of Georgia, Department of Human Resources (now the Department of Community Health for these purposes), Public Health, Chapter 290-5-28.

JUDICIAL DECISIONS

Constitutionality. — Requirement of the Mass Gathering Act, O.C.G.A. Ch. 27, T. 31, that a permit be obtained from the Department of Human Resources without specifying when, or even if, an application for a permit must be acted upon constitutes a prior restraint on speech in violation of the First Amendment. *Bo Fancy Prods., Inc. v. Rabun County Bd. of Comm'rs*, 476 S.E.2d 743 (1996).

Because the Mass Gatherings Act,

O.C.G.A. Ch. 27, T. 31, fails to provide a time limit within which the Department of Human Resources (DHR) must act upon an application for a permit, the statute delegates overly broad discretion to the DHR and, therefore, constitutes an unconstitutional prior restraint on the exercise of First Amendment rights. *Bo Fancy Prods., Inc. v. Rabun County Bd. of Comm'rs*, 267 Ga. 341, 478 S.E.2d 373 (1996).

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Health, § 74.

C.J.S. — 39A C.J.S., Health and Environment, § 35.

ALR. — Validity of statute or ordinance prohibiting or regulating holding of meeting in street, 25 ALR 114.

31-27-1. Definitions.

As used in this chapter, the term:

(1) "Mass gathering" means any event likely to attract 5,000 or more persons and to continue for 15 or more consecutive hours.

(2) “Permit” means written authorization to a person by the department to operate a mass gathering.

(3) “Person” means the state or any agency or institution thereof, any municipality, political subdivision, public or private corporation, individual, partnership, association, or other entity, and includes any officer or governing or managing body of any municipality, political subdivision, or public or private corporation. (Code 1933, § 88-1201a, enacted by Ga. L. 1971, p. 252, § 1.)

JUDICIAL DECISIONS

Cited in Granite State Outdoor Adver., Inc. v. City of Roswell, 283 Ga. 417, 658 S.E.2d 587 (2008).

OPINIONS OF THE ATTORNEY GENERAL

Interpretation of Code section’s definition of a mass gathering. — Mass gathering would have to be likely to last the 15 or more consecutive hours with

5,000 or more persons attracted to it for 15 or more hours. 1971 Op. Att’y Gen. No. 71-123.

RESEARCH REFERENCES

Am. Jur. 2d. — 12 Am. Jur. 2d, Breach of Peace and Disorderly Conduct, §§ 14 et seq., 33 et seq. 16A Am. Jur. 2d, Constitutional Law, §§ 556, 560, 562, 571, 572. 53A Am. Jur. 2d, Mobs and Riots, § 1. 77 Am. Jur. 2d, Veterans and Veterans’ Laws, §§ 55, 56, 72.

C.J.S. — 16A C.J.S., Constitutional Law, §§ 636, 645 et seq.

ALR. — Validity of statute or ordinance prohibiting or regulating holding of meeting in street, 10 ALR 1483; 25 ALR 114.

31-27-2. Permit requirement.

No person shall hold or promote, by advertising or otherwise, a mass gathering unless a permit has been issued for the gathering. Such permits shall be issued by the Department of Public Health, shall be in writing, shall specify the conditions under which issued, and shall remain in effect until suspended or revoked or until the mass gathering is terminated. The permit shall not be transferable or assignable, and a separate permit shall be required for each mass gathering. (Code 1933, § 88-1202a, enacted by Ga. L. 1971, p. 252, § 1; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214.)

The 2011 amendment, effective July 1, 2011, substituted “Department of Public Health” for “Department of Community Health” in the second sentence of this Code section.

Cross references. — Issuance of permits by Department of Natural Resources for holding of boat races, marine parades, tournaments, and other events, § 52-7-19.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

RESEARCH REFERENCES

Am. Jur. 2d. — 16A Am. Jur. 2d, Constitutional Law, § 565 et seq.

prohibiting or regulating holding of meeting in street, 10 ALR 1483; 25 ALR 114.

ALR. — Validity of statute or ordinance

31-27-3. Application for permit.

Application for a permit to promote or hold a mass gathering shall be made to the department on a form and in a manner prescribed by the department by the person who will promote or hold the mass gathering. Application for a permit to promote or hold a mass gathering shall be made at least 15 days before the first day of advertising and at least 45 days before the first day of the gathering. Water and sewage facilities shall be constructed and operational not later than 48 hours before the first day of the mass gathering. The application shall be accompanied by such plans, reports, and specifications as the department shall deem necessary. The plans, reports, and specifications shall provide for adequate and satisfactory water supply and sewage facilities, adequate drainage, adequate toilet and lavatory facilities, adequate refuse storage and disposal facilities, adequate sleeping areas and facilities, wholesome food and sanitary food service, adequate medical facilities, insect control, adequate fire protection, and such other matters as may be appropriate for security of life or health. The application shall disclose the names and addresses of all of the persons, firms, or corporations providing financial backing to the mass gathering and the amounts of such backing. (Code 1933, § 88-1203a, enacted by Ga. L. 1971, p. 252, § 1.)

JUDICIAL DECISIONS

Cited in *Bo Fancy Prods., Inc. v. Rabun County Bd. of Comm'rs*, 267 Ga. 341, 478 S.E.2d 373 (1996).

RESEARCH REFERENCES

Am. Jur. 2d. — 51 Am. Jur. 2d, Licenses and Permits, § 48 et seq.

31-27-4. Additional requirements for issuance of permit; denial, suspension, or revocation.

(a) Prior to the issuance of a permit, the applicant must:

(1) Provide a plan for limiting attendance, including methods of entering the area, number and location of ticket booths and entrances, and provisions for keeping nonticket holders out of the area;

(2) Provide a statement verifying that all construction and installation of facilities, including water supply, sewage disposal, insect control, food service equipment, and garbage handling facilities, will be completed at least 48 hours prior to the commencement of the event;

(3) Provide a detailed plan for food service, including a description of food sources, menu, mandatory use of single service dishes and utensils, refrigeration, and food handling and dispensing;

(4) Provide a detailed plan for use of signs to locate all facilities and roadways;

(5) Provide a statement from local fire and police authorities having jurisdiction over the area acknowledging that they can supply adequate security, traffic control, and law enforcement for the proposed gathering;

(6) Provide a detailed plan for emergency situations covering:

(A) Food supplies;

(B) Medical supplies, facilities, and personnel;

(C) An evacuation plan; and

(D) Emergency access roads;

(7) Provide a statement from the local civil defense director, if there is such an officer, indicating that he has been advised of the event and has approved the plan from a civil defense standpoint; and

(8) Provide a command post to be used by department personnel consisting of a minimum of one building or trailer equipped with an adequate communication system.

(b) If it appears necessary and proper that an application for a permit be denied or that a permit previously granted be suspended or revoked, the applicant or holder of the permit shall be notified thereof in writing and shall be afforded an opportunity for hearing as provided in Article 1 of Chapter 5 of this title. (Code 1933, § 88-1204a, enacted by Ga. L. 1971, p. 252, § 1; Ga. L. 1996, p. 6, § 31.)

RESEARCH REFERENCES

Am. Jur. 2d. — 51 Am. Jur. 2d, Licenses and Permits, § 16 et seq.

ALR. — Validity of statute or ordinance prohibiting or regulating holding of meet-

ing in street, 25 ALR 114.

31-27-5. Bond requirement; cash deposit in lieu of bond.

The person holding or promoting a mass gathering shall provide a bond of \$1 million issued by a surety company authorized to transact business in this state. The purpose of the bond shall be to guarantee full compliance with this chapter as well as other applicable provisions of this title and the provisions of Title 12, relating to air quality control and water supply quality control, and rules and regulations promulgated thereunder and to cover cleanup of the site. This bond shall be in favor of the state for the benefit of any person who is damaged as a result of the activity of a mass gathering. Any person claiming against the bond may maintain an action at law against the person holding or promoting the mass gathering and the surety. In lieu of furnishing the bond, the person holding or promoting a mass gathering may deposit with the commissioner a cash deposit in like amount. However, the bond specified in this Code section shall not be required in cases where the other requirements of this chapter are met by the applicant for a permit and an incorporated municipality or county owns the area upon which the mass gathering is to be held and commits itself, in writing, to clean up the site upon which the gathering is to be held. (Code 1933, § 88-1205a, enacted by Ga. L. 1971, p. 252, § 1; Ga. L. 1972, p. 912, § 1; Ga. L. 1985, p. 149, § 31.)

RESEARCH REFERENCES

Am. Jur. 2d. — 51 Am. Jur. 2d, Licenses and Permits, § 16 et seq.

31-27-6. Assessment for persons in attendance beyond number specified.

The person promoting or holding a mass gathering shall be assessed at the rate of \$5.00 for each person in attendance beyond the number specified in the application for such mass gathering. Any such assessment shall be remitted to the state treasury and credited to the general fund. (Code 1933, § 88-1206a, enacted by Ga. L. 1971, p. 252, § 1.)

31-27-7. Emergency powers of Governor; authority of director of Civil Defense Division.

In the event the commissioner of public health determines that the various facilities appropriate for security of life or health are inadequate due to the unprecedented size of the mass gathering, failure of the person or persons responsible for providing facilities, services, and

other requirements of this chapter, or for any other reason, the commissioner shall immediately inform the Governor who shall have general direction and control of the Civil Defense Division of the Department of Defense and may take whatever immediate action he deems necessary under the authority of Articles 1 through 3 of Chapter 3 of Title 38, as amended. Upon order of the Governor, the director of the Civil Defense Division shall, subject to the direction and control of the Governor, coordinate the activities of all organizations, agencies, and persons required to protect the health, safety, and general welfare of the public in the manner prescribed by Articles 1 through 3 of Chapter 3 of Title 38, as amended. (Code 1933, § 88-1207a, enacted by Ga. L. 1971, p. 252, § 1; Ga. L. 2009, p. 453, § 1-6/HB 228; Ga. L. 2011, p. 705, § 6-5/HB 214.)

The 2011 amendment, effective July 1, 2011, substituted “commissioner of public health” for “commissioner of community health” in the first sentence of this Code section.

Cross references. — Further provi-

sions regarding emergency powers of Governor, §§ 38-2-6, 38-3-22, 38-3-51, 45-12-29 et seq.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

RESEARCH REFERENCES

ALR. — Validity of statute or ordinance prohibiting or regulating holding of meeting in street, 10 ALR 1483; 25 ALR 114.

31-27-8. Recovery by state for costs and damages.

Any department or agency of the state which assumes the obligations of any person who has defaulted under this chapter may maintain an action at law to recover actual costs and damages suffered against the person holding or promoting a mass gathering, or one who defaults in the performance of an obligation. All damages recovered under this Code section, including, without limitation, the value of goods and services expended in behalf of one who has defaulted under this chapter, together with the costs thereof, shall be paid into the state treasury to the credit of the department or agency which suffered such expense. Actions to recover costs and damages under this Code section shall be brought in the superior court in the county in which the cause of action or some part thereof arose, or in which the person complained of has a principal place of business, or in which the person complained of resides. In all such actions, the procedure and rules of evidence shall be the same as in ordinary civil actions. (Code 1933, § 88-1208a, enacted by Ga. L. 1971, p. 252, § 1.)

31-27-9. Rules and regulations.

The department is authorized to adopt and promulgate such rules and regulations as may appear necessary to carry out the purposes of this chapter. (Code 1933, § 88-1209a, enacted by Ga. L. 1971, p. 252, § 1.)

RESEARCH REFERENCES

ALR. — Validity of statute or ordinance prohibiting or regulating holding of meeting in street, 10 ALR 1483; 25 ALR 114.

31-27-10. Applicability of chapter.

This chapter shall not apply to:

(1) Any mass gathering which is to be held in any regularly established permanent place of worship, athletic field, auditorium, coliseum, or other similar permanently established building within the maximum seating capacity;

(2) Fairs and similar industrial-agricultural exhibitions which have been in existence for at least five consecutive years prior to July 1, 1971; or

(3) Religious gatherings that are held for no more than seven days. (Ga. L. 1971, p. 252, § 2.)

RESEARCH REFERENCES

ALR. — Validity of statute or ordinance prohibiting or regulating holding of meeting in street, 10 ALR 1483; 25 ALR 114.

31-27-11. Civil penalty.

(a) Any person who is found by any agency or department after a hearing to have violated any provision of this chapter or duly promulgated supplementary rules and regulations or failed, neglected, or refused to comply with any final or emergency order of any agency or department acting under authority of this chapter shall be liable to a civil penalty of not less than \$1,000.00 nor more than \$10,000.00 for such violation. Each day of violation shall be considered a separate offense.

(b) Any person penalized under this Code section shall be entitled to judicial review. All hearings and proceedings for judicial review under this Code section shall be in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." All penalties and interest

recovered by such agency or department as provided in this Code section, together with the cost thereof, shall be paid into the state treasury to the credit of the general fund. (Code 1933, § 88-1210a, enacted by Ga. L. 1971, p. 252, § 1; Ga. L. 1985, p. 149, § 31.)

RESEARCH REFERENCES

ALR. — Recovery of cumulative statutory penalties, 71 ALR2d 986.

31-27-12. Criminal penalty.

Any person who violates any provision of this chapter or any rule or regulation adopted pursuant thereto shall be guilty of a misdemeanor. (Code 1933, § 88-1211a, enacted by Ga. L. 1971, p. 252, § 1.)

RESEARCH REFERENCES

ALR. — Validity of statute or ordinance prohibiting or regulating holding of meeting in street, 10 ALR 1483; 25 ALR 114.

CHAPTER 28

TOURIST COURTS

Sec.		Sec.	
31-28-1.	"Tourist court" defined.	31-28-5.	Standards for health, sanitation, and safety.
31-28-2.	Issuance of permits.	31-28-6.	Inspection of premises.
31-28-3.	Denial, suspension, and revocation of permits.	31-28-7.	Penalty.
31-28-4.	Administrative review of local government order.		

Cross references. — Regulation of hotels, inns, roadhouses, and others, T. 43, C. 21.

Administrative rules and regulations. — Tourist accommodations, Official

Compilation of the Rules and Regulations of the State of Georgia, Department of Human Resources (now the Department of Community Health for these purposes), Public Health, Chapter 290-5-18.

RESEARCH REFERENCES

ALR. — Validity and application of zoning regulations relating to mobile home or trailer parks, 42 ALR3d 598.

31-28-1. "Tourist court" defined.

As used in this chapter, the term "tourist court" means:

(1) Any facility consisting of two or more rooms or dwelling units providing lodging and other accommodations for tourists and travelers and includes tourist courts, tourist cottages, tourist homes, trailer parks, trailer courts, motels, motor hotels, hotels, and any similar place by whatever name called; and

(2) Any facility or establishment operated in conjunction with an establishment described in paragraph (1) of this Code section for the purpose of providing food, beverage, laundry, or recreational services. (Ga. L. 1953, Nov.-Dec. Sess., p. 475, § 1; Code 1933, § 88-1101, enacted by Ga. L. 1964, p. 499, § 1.)

JUDICIAL DECISIONS

Cited in Cobb County Health Dep't v. Henson, 226 Ga. 801, 177 S.E.2d 710 (1970).

RESEARCH REFERENCES

Am. Jur. 2d. — 20 Am. Jur. 2d, Covenants, Conditions, and Restrictions, §§ 193, 194. **C.J.S.** — 43A C.J.S., Inns, Hotels, and Eating Places, §§ 1, 2.

31-28-2. Issuance of permits.

It shall be unlawful for any person, firm, or corporation to operate a tourist court without having first obtained a valid permit therefor. Such permit shall be issued by the county board of health or its duly authorized representative, subject to supervision and direction by the Department of Public Health but, where the county board of health is not functioning, the permit shall be issued by the department. A permit shall be valid until suspended or revoked and shall not be transferable with respect to person or location. (Ga. L. 1953, Nov.-Dec. Sess., p. 475, § 2; Code 1933, § 88-1102, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1996, p. 6, § 31; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214.)

The 2011 amendment, effective July 1, 2011, substituted “Department of Public Health” for “Department of Community Health” in the second sentence of this Code section. **Law reviews.** — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

JUDICIAL DECISIONS

Applicability of injunction under § 31-5-9. — In absence of statutory provision for operation of motel, whether operated alone or in conjunction with a restaurant, while application for permit for its operation is pending, unlawful operation is subject to injunction under provisions of Ga. L. 1964, p. 499, § 1. Cobb County Health Dep’t v. Henson, 226 Ga. 801, 177 S.E.2d 710 (1970). **Cited in** Aldridge v. Georgia Hospitality & Travel Ass’n, 251 Ga. 234, 304 S.E.2d 708 (1983).

RESEARCH REFERENCES

Am. Jur. 2d. — 53A Am. Jur. 2d, Mobile Homes and Trailer Parks, §§ 5, 6. **C.J.S.** — 39A C.J.S., Health and Environment, § 65 et seq. 43A C.J.S., Inns, Hotels, and Eating Places, § 6.

31-28-3. Denial, suspension, and revocation of permits.

The county boards of health may suspend or revoke permits where the health, sanitation, and safety of the public require such action. When, in the judgment of such board or its duly authorized agents, it is necessary and proper that such application for a permit be denied or that a permit previously granted be suspended or revoked, the applicant or holder of the permit shall be notified thereof in writing and shall

be afforded an opportunity for hearing as provided in Article 1 of Chapter 5 of this title. In the event that such application is finally denied or such permit finally suspended or revoked, the applicant or holder thereof shall be given notice in writing, which notice shall specifically state the reasons why the application or permit has been suspended, revoked, or denied. (Ga. L. 1953, Nov.-Dec. Sess., p. 475, § 3; Code 1933, § 88-1103, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 2001, p. 4, § 31.)

RESEARCH REFERENCES

Am. Jur. 2d. — 20 Am. Jur. 2d, Covenants, Conditions, and Restrictions, §§ 263, 264, 278. **C.J.S.** — 43A C.J.S., Inns, Hotels, and Eating Places, §§ 6, 12.

31-28-4. Administrative review of local government order.

Any person substantially affected by any final order of the county board of health denying, suspending, revoking, or refusing to renew any permit provided under this chapter may secure review thereof by appeal to the department as provided in Article 1 of Chapter 5 of this title. (Code 1933, § 88-1104, enacted by Ga. L. 1964, p. 499, § 1.)

31-28-5. Standards for health, sanitation, and safety.

(a) The Department of Public Health and county boards of health shall have the power to adopt and promulgate rules and regulations to ensure the protection of the public health. Such rules and regulations shall prescribe reasonable standards for health, sanitation, and safety of tourist courts with regard to:

- (1) Location, drainage, and maintenance of grounds;
- (2) Size, ventilation, and maintenance of sleeping rooms, toilet and washrooms, and laundry rooms, where provided;
- (3) Installation of all electrical equipment and exposed electrical wiring;
- (4) Heating appliances and equipment, and installation thereof;
- (5) Water supply, plumbing fixtures and installations;
- (6) Sewage disposal;
- (7) Garbage and refuse disposal;
- (8) Control of vermin;
- (9) Accident prevention; and
- (10) Spacing of trailer coaches and lighting of trailer parks.

(b) County boards of health are empowered to adopt and promulgate supplementary rules and regulations consistent with those adopted and promulgated by the department. (Ga. L. 1953, Nov.-Dec. Sess., p. 475, § 5; Code 1933, § 88-1105, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214.)

The 2011 amendment, effective July 1, 2011, substituted “Department of Public Health” for “Department of Community Health” in the introductory language of subsection (a).

Cross references. — Standards and

requirements for construction of buildings generally, § 8-2-1 et seq.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

RESEARCH REFERENCES

Am. Jur. 2d. — 51 Am. Jur. 2d, Licenses and Permits, § 9 et seq. 53A Am. Jur. 2d, Mobile Homes and Trailer Parks, § 3 et seq.

C.J.S. — 26A C.J.S., Deeds, § 446 et seq. 39A C.J.S., Health and Environment, § 65 et seq. 43A C.J.S., Inns, Hotels, and Eating Places, § 7.

ALR. — Regulations concerning location of laundries, 6 ALR 1597.

Validity of statutory or municipal regulations as to garbage, 135 ALR 1305.

Liability of hotel or motel operator for injury or death of guest or privy resulting from condition in plumbing or bathroom of room or suite, 93 ALR3d 253.

31-28-6. Inspection of premises.

The Department of Public Health and the county boards of health and their duly authorized agents are authorized and empowered to enforce compliance with this chapter and the rules and regulations adopted and promulgated under this chapter and, in connection therewith, to enter upon and inspect the premises of a tourist court at any reasonable time and in a reasonable manner, as provided in Article 2 of Chapter 5 of this title. (Ga. L. 1953, Nov.-Dec. Sess., p. 475, § 6; Code 1933, § 88-1106, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1985, p. 149, § 31; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214.)

The 2011 amendment, effective July 1, 2011, substituted “Department of Public Health” for “Department of Community Health” in this Code section.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

31-28-7. Penalty.

Any person, firm, or corporation operating a tourist court without a valid permit shall be guilty of a misdemeanor. (Ga. L. 1953, Nov.-Dec. Sess., p. 475, § 8; Code 1933, § 88-1107, enacted by Ga. L. 1964, p. 499, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 53A Am. Jur. 2d, Mobile Homes and Trailer Parks, §§ 21, 22, 31.

CHAPTER 29

COMPENSATION OF EMPLOYEES OF STATE INSTITUTIONS WHO CONTRACT TUBERCULOSIS OR INFECTIOUS HEPATITIS

Sec.		Sec.	
31-29-1.	Amount of compensation.	31-29-6.	Rights of employees under State Personnel Administration.
31-29-2.	Physical examination required for compensation under Code Section 31-29-1.	31-29-7.	Rules and regulations of employing authority; exclusion from right to compensation of employees not subject to exposure.
31-29-3.	Periodic physical examinations of persons receiving compensation.	31-29-8.	Specific inclusion of employees of certain institutions.
31-29-4.	Effect of retirement under Chapter 2 of Title 47.		
31-29-5.	Contributions to retirement system where employee does not retire.		

Cross references. — Workers' compensation generally, T. 34, C. 9.

31-29-1. Amount of compensation.

Any employee of any state institution, agency, or department charged with the care, treatment, or diagnosis of persons infected with tuberculosis or infectious hepatitis who contracts tuberculosis or infectious hepatitis while employed by such institution, agency, or department may be carried on the payroll of such institution, agency, or department at one-half of his total compensation or \$150.00 per month, whichever is less, for the duration of his disability due to tuberculosis or infectious hepatitis, not to exceed 350 weeks. In the event of death of the employee while receiving compensation under this Code section, such compensation shall immediately cease. (Ga. L. 1953, Jan.-Feb. Sess., p. 513, § 1; Code 1933, § 88-2401, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1970, p. 737, § 1.)

OPINIONS OF THE ATTORNEY GENERAL

Applicability to employee retiring before effective date of Ga. L. 1953, Jan.-Feb. Sess., p. 513. — Employee who has not retired under Employee's Retirement Act and who contracted infectious hepatitis prior to effective date of Ga. L. 1953, Jan.-Feb. Sess., p. 513, § 1 et seq., would not be compensated under this section. 1970 Op. Att'y Gen. No. U70-170 (see O.C.G.A. § 31-29-1).

RESEARCH REFERENCES

Am. Jur. 2d. — 82 Am. Jur. 2d, Workmen's Compensation, §§ 379 et seq., 405.

C.J.S. — 100 C.J.S. (Rev), Workmen's Compensation, § 488.

31-29-2. Physical examination required for compensation under Code Section 31-29-1.

(a) In order for any employee of any state institution, agency, or department to be eligible to receive compensation under Code Section 31-29-1, he shall undergo a physical examination at the beginning of or during the course of his employment, which examination must show that he is free of tuberculosis or infectious hepatitis at the time of physical examination.

(b) All physical examinations conducted pursuant to subsection (a) of this Code section shall be provided free of charge by the institution, agency, or department employing the person. (Ga. L. 1953, Jan.-Feb. Sess., p. 513, §§ 2, 3; Code 1933, §§ 88-2402, 88-2403, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1970, p. 737, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 29 Am. Jur. 2d, Evidence, § 555 et seq.

Compensation, § 330. 100A C.J.S. (Rev), Workmen's Compensation, §§ 555, 610,

C.J.S. — 99 C.J.S. (Rev), Workmen's

631, 1036 et seq., 1107 et seq., 1155.

31-29-3. Periodic physical examinations of persons receiving compensation.

Any institution, agency, or department having employees qualifying for compensation under Code Section 31-29-1 may require periodic physical examinations of such employees to determine if each such employee has recovered sufficiently to resume his duties without danger of spreading the infection. If an employee is found to have recovered sufficiently, he must forthwith return to his duties. In the event of failure to do so, he shall be removed from the payroll of the institution, agency, or department. (Ga. L. 1953, Jan.-Feb. Sess., p. 513, § 4; Code 1933, § 88-2404, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1970, p. 737, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 82 Am. Jur. 2d, Workmen's Compensation, §§ 537, 538.

tion of insured in action for disability or accident benefits, 163 ALR 923; 5 ALR3d

ALR. — Requiring physical examina-

929.

31-29-4. Effect of retirement under Chapter 2 of Title 47.

If an employee of any state institution, agency, or department elects to retire under the Employees' Retirement System of Georgia, if eligible to do so at the time it is ascertained that he has contracted tuberculosis or infectious hepatitis, the compensation authorized under Code Section 31-29-1 shall not be paid. (Ga. L. 1953, Jan.-Feb. Sess., p. 513, § 5; Code 1933, § 88-2405, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1970, p. 737, § 1.)

31-29-5. Contributions to retirement system where employee does not retire.

In the event the employee is not eligible or does not elect to retire under the Employees' Retirement System of Georgia, if eligible to do so after contracting tuberculosis or infectious hepatitis, the state institution, agency, or department by which he is employed shall continue to make contributions to the Employees' Retirement System of Georgia, based on the employee's total or reduced compensation, for the duration of his illness, not to exceed a maximum of 350 weeks. The employee may elect to continue his contributions to the Employees' Retirement System of Georgia based on his total compensation or on the reduced compensation received from the institution, agency, or department. The retirement credits and benefits of an employee receiving compensation under Code Section 31-29-1 shall be based upon the compensation elected and contributed on by the employee. (Ga. L. 1953, Jan.-Feb. Sess., p. 513, § 6; Code 1933, § 88-2406, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1970, p. 737, § 1.)

OPINIONS OF THE ATTORNEY GENERAL

Code section inapplicable to one not retired under Employee's Retirement Act. — Employee not retired under Employee's Retirement Act who contracted infectious hepatitis prior to effective

date of Ga. L. 1953, Jan.-Feb. Sess., p. 513, § 1 et seq., would not be compensated. 1970 Op. Att'y Gen. No. U70-170 (see O.C.G.A. Ch. 29, T. 31).

31-29-6. Rights of employees under State Personnel Administration.

Any employee of any state institution, agency, or department who qualifies under Code Section 31-29-1 shall be given credit for all salary adjustments and the same eligibility for step increases to which he or she would have been entitled under the rules of the State Personnel Board had he or she not contracted tuberculosis or infectious hepatitis and had he or she remained on the job full time in the same capacity and with the same status as he or she had previously attained. (Ga. L.

1953, Jan.-Feb. Sess., p. 513, § 7; Code 1933, § 88-2407, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1970, p. 737, § 1; Ga. L. 2009, p. 745, § 2/SB 97; Ga. L. 2012, p. 446, § 2-42/HB 642.)

The 2012 amendment, effective July 1, 2012, inserted “or she” throughout this Code section and substituted “under the rules of the State Personnel Board” for “under the State Personnel Administration” in the middle.

Editor’s notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: “Personnel, equipment, and facilities that were assigned to the State Personnel Administra-

tion as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act.” This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: “Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90.”

31-29-7. Rules and regulations of employing authority; exclusion from right to compensation of employees not subject to exposure.

The superintendent or director having the legal authority to appoint employees of any state institution, agency, or department affected by Code Section 31-29-1 is authorized to adopt and promulgate rules and regulations not inconsistent with Code Sections 31-29-1 through 31-29-6, to effectuate and carry out the intent and purpose of this chapter. Such superintendent or director may exclude from the coverage of Code Section 31-29-1 the employees of divisions or units of the institution, agency, or department who, in the opinion of the superintendent or director, have no occupational exposure to tuberculosis or infectious hepatitis. (Ga. L. 1953, Jan.-Feb. Sess., p. 513, § 9; Code 1933, § 88-2409, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1970, p. 737, § 1.)

31-29-8. Specific inclusion of employees of certain institutions.

It is declared to be the specific intent of Code Section 31-29-1 that the employees of the Central State Hospital, Northwest Georgia Regional Hospital, and Reidsville State Prison be covered by Code Sections 31-29-1 through 31-29-7. This Code section shall not be construed to exclude the employees of any other state institution, agency, or department charged with the care, treatment, or diagnosis of persons infected with tuberculosis or infectious hepatitis who are subject to occupational exposure to tuberculosis or infectious hepatitis. (Ga. L. 1953, Jan.-Feb. Sess., p. 513, § 10; Code 1933, § 88-2410, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1970, p. 737, § 1.)

CHAPTER 30

REPORTS ON VETERANS EXPOSED TO AGENT ORANGE

Sec.		Sec.	
31-30-1.	(For effective date, see note.) Definitions.	31-30-6.	(For effective date, see note) Actions for release of information and individual medical records.
31-30-2.	(For effective date, see note.) Submission of report to department.	31-30-7.	(For effective date, see note.) Referral of veterans for medical and financial assistance; screening services to ascertain physical damage from exposure.
31-30-3.	(For effective date, see note.) Report by department of information submitted under chapter; conduct of epidemiological studies by department.	31-30-8.	(For effective date, see note.) Discontinuance of referral and screening programs performed by federal government.
31-30-4.	(For effective date, see note.) Disclosure of identity of subject of report; statistics as public information.	31-30-9.	(For effective date, see note.) When chapter effective.
31-30-5.	(For effective date, see note.) Immunity of physician or hospital providing required information.		

Delayed effective date. — Code Section 31-30-9 provides that this chapter shall become effective when and to the extent that funds are appropriated and available to the Department of Human Resources (now Department of Community Health) under an appropriation which specifically refers to this chapter and provides that it is intended for the

implementation of this chapter. Funds were not appropriated at the 1983, 1984, 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, or 2012 sessions of the General Assembly.

Cross references. — Veterans affairs, T. 38, C. 4.

31-30-1. (For effective date, see note.) Definitions.

As used in this chapter, the term:

(1) "Agent Orange" means the herbicide composed primarily of trichlorophenoxyacetic acid and dichlorophenoxyacetic acid.

(2) "Veteran" means a person who was a resident of this state at the time of his induction into the armed forces of the United States of America or was a resident of this state on or after November 1, 1982, and who served in Vietnam, Cambodia, or Laos during the Vietnam Conflict. (Code 1981, § 31-30-1, enacted by Ga. L. 1982, p. 2321, § 1.)

Editor's notes. — For information as to the effective date of this Code section, see the delayed effective date note at the beginning of this chapter.

31-30-2. (For effective date, see note.) Submission of report to department.

(a) A physician who has primary responsibility for treating a veteran who believes he may have been exposed to chemical defoliants or herbicides or other causative agents, including but not limited to Agent Orange, while serving in the armed forces of the United States shall, at the request of the veteran, submit a report to the department on a form provided by the department. If there is no physician having primary responsibility for treating the veteran, the hospital treating the veteran shall, at the request of the veteran, submit the report to the department.

(b) The form provided by the department to the physician shall request the following information:

(1) Symptoms of the veteran which may be related to exposure to a chemical defoliant or herbicide or other causative agent, including Agent Orange;

(2) Diagnosis of the veteran; and

(3) Methods of treatment prescribed.

(c) The department may require the veteran to provide such other information as determined by the commissioner. (Code 1981, § 31-30-2, enacted by Ga. L. 1982, p. 2321, § 1.)

Editor's notes. — For information as to the effective date of this Code section, see the delayed effective date note at the beginning of this chapter.

31-30-3. (For effective date, see note.) Report by department of information submitted under chapter; conduct of epidemiological studies by department.

(a) The department, in consultation and cooperation with a board certified medical toxicologist, shall compile and evaluate information submitted under this chapter into a report to be distributed annually to members of the General Assembly and to the United States Department of Veterans Affairs and the Georgia Department of Veterans Service. The report shall contain current research findings on the effects of exposure to chemical defoliants or herbicides or other causative agents, including Agent Orange, and statistical information compiled from reports submitted by physicians or hospitals.

(b) The department, in consultation and cooperation with a board certified medical toxicologist, shall conduct epidemiological studies on veterans who have cancer or other medical problems associated with exposure to a chemical defoliant or herbicide or any other causative agent, including Agent Orange, or who have children born with birth

defects after the veterans' suspected exposure to a chemical defoliant or herbicide or any other causative agent, including Agent Orange. The department must obtain consent from each veteran to be studied under this subsection. The department shall compile and evaluate information obtained from these studies into a report to be distributed as provided by subsection (a) of this Code section. (Code 1981, § 31-30-3, enacted by Ga. L. 1982, p. 2321, § 1; Ga. L. 1990, p. 45, § 1.)

Editor's notes. — For information as to the effective date of this Code section, see the delayed effective date note at the beginning of this chapter.

31-30-4. (For effective date, see note.) Disclosure of identity of subject of report; statistics as public information.

The identity of a veteran about whom a report has been made under Code Section 31-30-2 or 31-30-3 may not be disclosed unless the veteran consents to the disclosure. Statistical information collected under this chapter is public information. (Code 1981, § 31-30-4, enacted by Ga. L. 1982, p. 2321, § 1.)

Editor's notes. — For information as to the effective date of this Code section, see the delayed effective date note at the beginning of this chapter.

31-30-5. (For effective date, see note.) Immunity of physician or hospital providing required information.

A physician or a hospital subject to this chapter who complies with this chapter may not be held civilly or criminally liable for providing the information required by this chapter. (Code 1981, § 31-30-5, enacted by Ga. L. 1982, p. 2321, § 1.)

Editor's notes. — For information as to the effective date of this Code section, see the delayed effective date note at the beginning of this chapter.

31-30-6. (For effective date, see note.) Actions for release of information and individual medical records.

The Attorney General may represent a class of individuals composed of veterans who may have been injured because of contact with chemical defoliants or herbicides or other causative agents, including Agent Orange, in an action for release of information relating to exposure to such chemicals during military service and for release of individual medical records. (Code 1981, § 31-30-6, enacted by Ga. L. 1982, p. 2321, § 1.)

Editor's notes. — For information as to the effective date of this Code section, see the delayed effective date note at the beginning of this chapter.

31-30-7. (For effective date, see note.) Referral of veterans for medical and financial assistance; screening services to ascertain physical damage from exposure.

(a) The department and the health science centers and other medical facilities of the University System of Georgia shall institute a cooperative program to:

(1) Refer veterans to appropriate state and federal agencies for the purpose of filing claims to remedy medical and financial problems caused by the veterans' exposure to chemical defoliants or herbicides or other causative agents, including Agent Orange; and

(2) Provide veterans with fat tissue biopsies, genetic counseling, and genetic screening to determine if the veteran has suffered physical damage as a result of substantial exposure to chemical defoliants or herbicides or other causative agents, including Agent Orange.

(b) The commissioner shall adopt rules necessary to the administration of the programs authorized by this Code section. (Code 1981, § 31-30-7, enacted by Ga. L. 1982, p. 2321, § 1.)

Editor's notes. — For information as to the effective date of this Code section, see the delayed effective date note at the beginning of this chapter.

31-30-8. (For effective date, see note.) Discontinuance of referral and screening programs performed by federal government.

If the commissioner determines that an agency of the federal government is performing the referral and screening functions required by Code Section 31-30-7, the commissioner may discontinue any program required by this chapter or any duty required of a physician or hospital under this chapter. (Code 1981, § 31-30-8, enacted by Ga. L. 1982, p. 2321, § 1.)

Editor's notes. — For information as to the effective date of this Code section, see the delayed effective date note at the beginning of this chapter.

31-30-9. (For effective date, see note.) When chapter effective.

This chapter shall become effective when and to the extent that funds are appropriated and available to the Department of Public Health under an appropriation which specifically refers to this chapter and provides that it is intended for the implementation of this chapter. (Code 1981, § 31-30-9, enacted by Ga. L. 1982, p. 2321, § 1; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214.)

The 2011 amendment, effective July 1, 2011, substituted “Department of Public Health” for “Department of Community Health” in this Code section.

Editor’s notes. — For information as to the effective date of this Code section,

see the delayed effective date note at the beginning of this chapter.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

CHAPTER 31

BOXING MATCH LICENSES

Sec.

31-31-1 through 31-31-6 [Repealed].

31-31-1 through 31-31-6.

Reserved. Repealed by Ga. L. 1998, p. 1052, § 1, effective July 1, 1998.

Editor's notes. — This chapter was based on Code 1981, § 31-31-1, enacted by Ga. L. 1983, p. 941, § 1; Ga. L. 1984, p. 1223, § 1; Ga. L. 1987, p. 480, § 1; Code 1981, § 31-31-2, enacted by Ga. L. 1983, p. 941, § 1; Ga. L. 1984, p. 1223, §§ 2, 3; Ga. L. 1995, p. 671, § 1; Code 1981, § 31-31-3, enacted by Ga. L. 1983, p. 941, § 1; Ga. L. 1984, p. 1223, § 4; Code 1981, § 31-31-4, enacted by Ga. L. 1983, p. 941, § 1; Ga. L. 1984, p. 1223, § 5; Code 1981, § 31-31-4.1, enacted by Ga. L. 1984, p. 1223, § 6; Ga. L. 1986, p. 674, § 1; Code 1981, § 31-31-4.2, enacted by Ga. L. 1984, p. 1223, § 6; Code 1981, § 31-31-4.3, enacted by Ga. L. 1984, p. 1223, § 6; Ga. L. 1996, p. 6, § 31; Code 1981, § 31-31-5, enacted by Ga. L. 1983, p. 941, § 1; Ga. L.

1984, p. 1223, § 7; Code 1981, § 31-31-6, enacted by Ga. L. 1983, p. 941, § 1; Ga. L. 1984, p. 1223, § 8; Code 1981, § 31-31-7, enacted by Ga. L. 1986, p. 674, § 2; Ga. L. 1989, p. 840, § 1; Ga. L. 1995, p. 671, § 2.

This chapter was repealed by Ga. L. 1998, p. 1052, § 1, effective July 1, 1998. Ga. L. 1998, p. 1052, § 3, not codified by the General Assembly, provides: "This Act shall become effective only upon the express appropriation of funds by the General Assembly to carry out the purposes of this Act." Funding was appropriated effective July 1, 1998. For present provisions relating to the Georgia Athletic and Entertainment Commission, see Chapter 4B of Title 43.

CHAPTER 32

ADVANCE DIRECTIVES FOR HEALTH CARE

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Cross references. — Durable power of attorney for health care, T. 31, C. 36. Cardiopulmonary resuscitation, T. 31, C. 39. Impact of anatomical gift on an advance directive for health care, § 44-5-159.

Editor's notes. — Chapter 32 was added to Title 31 by both Ga. L. 1984, p. 1477, § 1, and by Ga. L. 1984, p. 1680, § 1. The former was set out as former Chapter 32 and the latter was redesignated as Chapter 33 by Ga. L. 1985, p. 149, § 31.

Ga. L. 2007, p. 133, § 2/HB 24, effective July 1, 2007, repealed the Code sections formerly codified at this chapter and at Chapter 36 of this title and enacted the current chapter. The former chapter consisted of Code Sections 31-32-1 through 31-32-12, relating to living wills, and was based on Ga. L. 1984, p. 1477, § 1 and Ga. L. 1985, p. 455, § 1; Ga. L. 1986, p. 445, §§ 1, 2; Ga. L. 1987, p. 322, § 1; Ga. L. 1989, p. 1182, § 1, 2; Ga. L. 1991, p. 94, § 31; Ga. L. 1992, p. 1926, §§ 1-7; Ga. L. 1993, p. 91, § 31.

Ga. L. 2007, p. 133, § 1/HB 24, not codified by the General Assembly, provides: "(a) The General Assembly has

long recognized the right of the individual to control all aspects of his or her personal care and medical treatment, including the right to insist upon medical treatment, decline medical treatment, or direct that medical treatment be withdrawn. In order to secure these rights, the General Assembly has adopted and amended statutes recognizing the living will and health care agency and provided statutory forms for both documents.

"(b) The General Assembly has determined that the statutory forms for the living will and durable power of attorney for health care are confusing and inconsistent and that the statutes providing for the living will and health care agency contain conflicting concepts, inconsistent and out-of-date terminology, and confusing and inconsistent requirements for execution. In addition, there is a commendable trend among the states to combine the concepts of the living will and health care agency into a single legal document.

"(c) The General Assembly recognizes that a significant number of individuals representing the academic, medical, legislative, and legal communities, state officials, ethics scholars, and advocacy groups

worked together to develop the advance directive for health care contained in this Act, and the collective intent was to create a form that uses understandable and everyday language in order to encourage more citizens of this state to execute advance directives for health care.

“(d) The General Assembly finds that the clear expression of an individual’s decisions regarding health care, whether made by the individual or an agent appointed by the individual, is of critical importance not only to citizens but also to the health care and legal communities, third parties, and families. In furtherance of these purposes, the General Assembly enacts a new Chapter 32 of Title 31, setting forth general principles governing the expression of decisions regarding health care and the appointment of a health care agent, as well as a form of advance directive for health care.”

Law reviews. — For article, “The ‘Right to Die’ in Georgia,” see 20 Ga. St. B.J. 68 (1983). For article, “The Georgia Living Will,” see 21 Ga. St. B.J. 15 (1984). For article, “An Overview of Georgia’s Living Will Legislation,” see 36 Mercer L. Rev. 45 (1984). For annual survey on wills, trusts, and administration of estates, see 36 Mercer L. Rev. 375 (1984). For article,

“Right to Die Legislation: The Effect on Physicians’ Liability,” see 39 Mercer L. Rev. 517 (1988). For article, “If Nancy Cruzan Had Lived in Georgia: A Summary of Georgia Law Regarding the Right to Die,” see 27 Ga. St. B.J. 194 (1991). For article, “Experimenting with the ‘Right to Die’ in the Laboratory of the States,” see 25 Ga. L. Rev. 1253 (1991). For article, “Medical Decision-Making in Georgia,” see 10 Ga. St. B.J. 50 (2005). For article, “Are There Checks and Balances on Terminating the Lives of Children with Disabilities? Should There Be?,” see 25 Ga. St. U.L. Rev. 959 (2009).

For note, “Amendments to the Living Will Statute: Two Down and One to Go,” see 23 Ga. St. B.J. 99 (1987). For note, “Incubating for the State: The Precarious Autonomy of Persistently Vegetative and Brain-Dead Pregnant Women,” 22 Ga. L. Rev. 1103 (1988). For note, “Determining Patient Competency in Treatment Refusal Cases,” see 24 Ga. L. Rev. 733 (1990).

For comment, “The Expense of Expanding the Right to Die: A Trilogy,” see 5 Ga. St. U.L. Rev. 117 (1988). For comment, “Living Will Statutes in Light of Cruzan v. Director, Missouri Department of Health: Ensuring that a Patient’s Wishes Will Prevail,” see 40 Emory L.J. 1305 (1991).

JUDICIAL DECISIONS

Applicability to patients who have “terminal conditions.” — Living Will Act, O.C.G.A. § 31-32-1, applies to patients who have “terminal conditions” and who wish to exercise the patients’ rights to

refuse medical treatment by the withdrawal of life-sustaining procedures. *State v. McAfee*, 259 Ga. 579, 385 S.E.2d 651 (1989).

RESEARCH REFERENCES

Am. Jur. 2d. — 22A Am. Jur. 2d, Death, § 547 et seq.

Am. Jur. Proof of Facts. — Time of Death — Medicolegal Considerations, 16 POF2d 87.

Proof of Basis for Refusal or Discontinuance of Life-Sustaining Treatment on Behalf of Incapacitated Person, 40 POF3d 287.

ALR. — Judicial power to order discon-

tinuance of life-sustaining treatment, 48 ALR4th 67.

Living wills: validity, construction, and effect, 49 ALR4th 812.

Tortious maintenance or removal of life supports, 58 ALR4th 222.

Propriety of, and liability related to, issuance or enforcement of do not resuscitate orders, 46 ALR5th 793.

31-32-1. Short title.

This chapter shall be known and may be cited as the “Georgia Advance Directive for Health Care Act.” (Code 1981, § 31-32-1, enacted by Ga. L. 2007, p. 133, § 2/HB 24.)

Law reviews. — For survey article on administration, see 60 Mercer L. Rev. 417 (2008).
wills, trusts, guardianships, and fiduciary

RESEARCH REFERENCES

C.J.S. — 41 C.J.S., Hospitals, § 42.

31-32-2. Definitions.

As used in this chapter, the term:

(1) “Advance directive for health care” means a written document voluntarily executed by a declarant in accordance with the requirements of Code Section 31-32-5.

(2) “Attending physician” means the physician who has primary responsibility at the time of reference for the treatment and care of the declarant.

(3) “Declarant” means a person who has executed an advance directive for health care authorized by this chapter.

(4) “Durable power of attorney for health care” means a written document voluntarily executed by an individual creating a health care agency in accordance with Chapter 36 of this title, as such chapter existed on and before June 30, 2007.

(5) “Health care” means any care, treatment, service, or procedure to maintain, diagnose, treat, or provide for a declarant’s physical or mental health or personal care.

(6) “Health care agent” means a person appointed by a declarant to act for and on behalf of the declarant to make decisions related to consent, refusal, or withdrawal of any type of health care and decisions related to autopsy, anatomical gifts, and final disposition of a declarant’s body when a declarant is unable or chooses not to make health care decisions for himself or herself. The term “health care agent” shall include any back-up or successor agent appointed by the declarant.

(7) “Health care facility” means a hospital, skilled nursing facility, hospice, institution, home, residential or nursing facility, treatment facility, and any other facility or service which has a valid permit or provisional permit issued under Chapter 7 of this title or which is

licensed, accredited, or approved under the laws of any state, and includes hospitals operated by the United States government or by any state or subdivision thereof.

(8) "Health care provider" means the attending physician and any other person administering health care to the declarant at the time of reference who is licensed, certified, or otherwise authorized or permitted by law to administer health care in the ordinary course of business or the practice of a profession, including any person employed by or acting for any such authorized person.

(9) "Life-sustaining procedures" means medications, machines, or other medical procedures or interventions which, when applied to a declarant in a terminal condition or in a state of permanent unconsciousness, could in reasonable medical judgment keep the declarant alive but cannot cure the declarant and where, in the judgment of the attending physician and a second physician, death will occur without such procedures or interventions. The term "life-sustaining procedures" shall not include the provision of nourishment or hydration but a declarant may direct the withholding or withdrawal of the provision of nourishment or hydration in an advance directive for health care. The term "life-sustaining procedures" shall not include the administration of medication to alleviate pain or the performance of any medical procedure deemed necessary to alleviate pain.

(10) "Living will" means a written document voluntarily executed by an individual directing the withholding or withdrawal of life-sustaining procedures when an individual is in a terminal condition, coma, or persistent vegetative state in accordance with this chapter, as such chapter existed on and before June 30, 2007.

(11) "Physician" means a person lawfully licensed in this state to practice medicine and surgery pursuant to Article 2 of Chapter 34 of Title 43; and if the declarant is receiving health care in another state, a person lawfully licensed in such state.

(12) "Provision of nourishment or hydration" means the provision of nutrition or fluids by tube or other medical means.

(13) "State of permanent unconsciousness" means an incurable or irreversible condition in which the declarant is not aware of himself or herself or his or her environment and in which the declarant is showing no behavioral response to his or her environment.

(14) "Terminal condition" means an incurable or irreversible condition which would result in the declarant's death in a relatively short period of time. (Code 1981, § 31-32-2, enacted by Ga. L. 2007, p. 133, § 2/HB 24.)

31-32-3. Savings clause for existing living wills and durable powers of attorney for health care.

The provisions of this chapter shall not apply to, affect, or invalidate a living will or durable power of attorney for health care executed prior to July 1, 2007, to which the provisions of former Chapter 32 or Chapter 36 of this title shall continue to apply, nor shall it affect any claim, right, or remedy that accrued prior to July 1, 2007. (Code 1981, § 31-32-3, enacted by Ga. L. 2007, p. 133, § 2/HB 24.)

31-32-4. Form.

“GEORGIA ADVANCE DIRECTIVE FOR HEALTH CARE

By: _____ Date of Birth: _____
(Print Name) (Month/Day/Year)

This advance directive for health care has four parts:

PART ONE HEALTH CARE AGENT. *This part allows you to choose someone to make health care decisions for you when you cannot (or do not want to) make health care decisions for yourself. The person you choose is called a health care agent. You may also have your health care agent make decisions for you after your death with respect to an autopsy, organ donation, body donation, and final disposition of your body. You should talk to your health care agent about this important role.*

PART TWO TREATMENT PREFERENCES. *This part allows you to state your treatment preferences if you have a terminal condition or if you are in a state of permanent unconsciousness. PART TWO will become effective only if you are unable to communicate your treatment preferences. Reasonable and appropriate efforts will be made to communicate with you about your treatment preferences before PART TWO becomes effective. You should talk to your family and others close to you about your treatment preferences.*

PART THREE GUARDIANSHIP. *This part allows you to nominate a person to be your guardian should one ever be needed.*

PART FOUR EFFECTIVENESS AND SIGNATURES. *This part requires your signature and the signatures of*

two witnesses. You must complete PART FOUR if you have filled out any other part of this form.

You may fill out any or all of the first three parts listed above. You must fill out PART FOUR of this form in order for this form to be effective.

You should give a copy of this completed form to people who might need it, such as your health care agent, your family, and your physician. Keep a copy of this completed form at home in a place where it can easily be found if it is needed. Review this completed form periodically to make sure it still reflects your preferences. If your preferences change, complete a new advance directive for health care.

Using this form of advance directive for health care is completely optional. Other forms of advance directives for health care may be used in Georgia.

You may revoke this completed form at any time. This completed form will replace any advance directive for health care, durable power of attorney for health care, health care proxy, or living will that you have completed before completing this form.

PART ONE: HEALTH CARE AGENT

[PART ONE will be effective even if PART TWO is not completed. A physician or health care provider who is directly involved in your health care may not serve as your health care agent. If you are married, a future divorce or annulment of your marriage will revoke the selection of your current spouse as your health care agent. If you are not married, a future marriage will revoke the selection of your health care agent unless the person you selected as your health care agent is your new spouse.]

(1) HEALTH CARE AGENT

I select the following person as my health care agent to make health care decisions for me:

Name: _____

Address: _____

Telephone Numbers: _____

(Home, Work, and Mobile)

(2) BACK-UP HEALTH CARE AGENT

[This section is optional. PART ONE will be effective even if this section is left blank.]

If my health care agent cannot be contacted in a reasonable time period and cannot be located with reasonable efforts or for any reason

my health care agent is unavailable or unable or unwilling to act as my health care agent, then I select the following, each to act successively in the order named, as my back-up health care agent(s):

Name: _____

Address: _____

Telephone Numbers: _____

(Home, Work, and Mobile)

Name: _____

Address: _____

Telephone Numbers: _____

(Home, Work, and Mobile)

(3) GENERAL POWERS OF HEALTH CARE AGENT

My health care agent will make health care decisions for me when I am unable to communicate my health care decisions or I choose to have my health care agent communicate my health care decisions.

My health care agent will have the same authority to make any health care decision that I could make. My health care agent's authority includes, for example, the power to:

- Admit me to or discharge me from any hospital, skilled nursing facility, hospice, or other health care facility or service;
- Request, consent to, withhold, or withdraw any type of health care; and
- Contract for any health care facility or service for me, and to obligate me to pay for these services (and my health care agent will not be financially liable for any services or care contracted for me or on my behalf).

My health care agent will be my personal representative for all purposes of federal or state law related to privacy of medical records (including the Health Insurance Portability and Accountability Act of 1996) and will have the same access to my medical records that I have and can disclose the contents of my medical records to others for my ongoing health care.

My health care agent may accompany me in an ambulance or air ambulance if in the opinion of the ambulance personnel protocol permits a passenger and my health care agent may visit or consult with me in person while I am in a hospital, skilled nursing facility, hospice, or other health care facility or service if its protocol permits visitation.

My health care agent may present a copy of this advance directive for health care in lieu of the original and the copy will have the same meaning and effect as the original.

I understand that under Georgia law:

- My health care agent may refuse to act as my health care agent;
- A court can take away the powers of my health care agent if it finds that my health care agent is not acting properly; and
- My health care agent does not have the power to make health care decisions for me regarding psychosurgery, sterilization, or treatment or involuntary hospitalization for mental or emotional illness, developmental disability, or addictive disease.

(4) GUIDANCE FOR HEALTH CARE AGENT

When making health care decisions for me, my health care agent should think about what action would be consistent with past conversations we have had, my treatment preferences as expressed in PART TWO (if I have filled out PART TWO), my religious and other beliefs and values, and how I have handled medical and other important issues in the past. If what I would decide is still unclear, then my health care agent should make decisions for me that my health care agent believes are in my best interest, considering the benefits, burdens, and risks of my current circumstances and treatment options.

(5) POWERS OF HEALTH CARE AGENT AFTER DEATH

(A) AUTOPSY

My health care agent will have the power to authorize an autopsy of my body unless I have limited my health care agent's power by initialing below.

_____ (Initials) My health care agent will not have the power to authorize an autopsy of my body (unless an autopsy is required by law).

(B) ORGAN DONATION AND DONATION OF BODY

My health care agent will have the power to make a disposition of any part or all of my body for medical purposes pursuant to the Georgia Revised Uniform Anatomical Gift Act, unless I have limited my health care agent's power by initialing below.

[Initial each statement that you want to apply.]

_____ (Initials) My health care agent will not have the power to make a disposition of my body for use in a medical study program.

_____ (Initials) My health care agent will not have the power to donate any of my organs.

(C) FINAL DISPOSITION OF BODY

My health care agent will have the power to make decisions about the final disposition of my body unless I have initialed below.

_____ (Initials) I want the following person to make decisions about the final disposition of my body:

Name: _____

Address: _____

Telephone Numbers: _____
(Home, Work, and Mobile)

I wish for my body to be:

_____ (Initials) Buried

OR

_____ (Initials) Cremated

PART TWO: TREATMENT PREFERENCES

[PART TWO will be effective only if you are unable to communicate your treatment preferences after reasonable and appropriate efforts have been made to communicate with you about your treatment preferences. PART TWO will be effective even if PART ONE is not completed. If you have not selected a health care agent in PART ONE, or if your health care agent is not available, then PART TWO will provide your physician and other health care providers with your treatment preferences. If you have selected a health care agent in PART ONE, then your health care agent will have the authority to make all health care decisions for you regarding matters covered by PART TWO. Your health care agent will be guided by your treatment preferences and other factors described in Section (4) of PART ONE.]

(6) CONDITIONS

PART TWO will be effective if I am in any of the following conditions:

[Initial each condition in which you want PART TWO to be effective.]

_____ (Initials) A terminal condition, which means I have an incurable or irreversible condition that will result in my death in a relatively short period of time.

_____ (Initials) A state of permanent unconsciousness, which means I am in an incurable or irreversible condition in which I am

not aware of myself or my environment and I show no behavioral response to my environment.

My condition will be determined in writing after personal examination by my attending physician and a second physician in accordance with currently accepted medical standards.

(7) TREATMENT PREFERENCES

[State your treatment preference by initialing (A), (B), or (C). If you choose (C), state your additional treatment preferences by initialing one or more of the statements following (C). You may provide additional instructions about your treatment preferences in the next section. You will be provided with comfort care, including pain relief, but you may also want to state your specific preferences regarding pain relief in the next section.]

If I am in any condition that I initialed in Section (6) above and I can no longer communicate my treatment preferences after reasonable and appropriate efforts have been made to communicate with me about my treatment preferences, then:

(A) _____ (Initials) Try to extend my life for as long as possible, using all medications, machines, or other medical procedures that in reasonable medical judgment could keep me alive. If I am unable to take nutrition or fluids by mouth, then I want to receive nutrition or fluids by tube or other medical means.

OR

(B) _____ (Initials) Allow my natural death to occur. I do not want any medications, machines, or other medical procedures that in reasonable medical judgment could keep me alive but cannot cure me. I do not want to receive nutrition or fluids by tube or other medical means except as needed to provide pain medication.

OR

(C) _____ (Initials) I do not want any medications, machines, or other medical procedures that in reasonable medical judgment could keep me alive but cannot cure me, except as follows:

[Initial each statement that you want to apply to option (C).]

_____ (Initials) If I am unable to take nutrition by mouth, I want to receive nutrition by tube or other medical means.

_____ (Initials) If I am unable to take fluids by mouth, I want to receive fluids by tube or other medical means.

_____ (Initials) If I need assistance to breathe, I want to have a ventilator used.

_____ (Initials) If my heart or pulse has stopped, I want to have cardiopulmonary resuscitation (CPR) used.

(8) ADDITIONAL STATEMENTS

[This section is optional. PART TWO will be effective even if this section is left blank. This section allows you to state additional treatment preferences, to provide additional guidance to your health care agent (if you have selected a health care agent in PART ONE), or to provide information about your personal and religious values about your medical treatment. For example, you may want to state your treatment preferences regarding medications to fight infection, surgery, amputation, blood transfusion, or kidney dialysis. Understanding that you cannot foresee everything that could happen to you after you can no longer communicate your treatment preferences, you may want to provide guidance to your health care agent (if you have selected a health care agent in PART ONE) about following your treatment preferences. You may want to state your specific preferences regarding pain relief.]

(9) IN CASE OF PREGNANCY

[PART TWO will be effective even if this section is left blank.]

I understand that under Georgia law, PART TWO generally will have no force and effect if I am pregnant unless the fetus is not viable and I indicate by initialing below that I want PART TWO to be carried out.

_____ (Initials) I want PART TWO to be carried out if my fetus is not viable.

PART THREE: GUARDIANSHIP

(10) GUARDIANSHIP

[PART THREE is optional. This advance directive for health care will be effective even if PART THREE is left blank. If you wish to nominate a person to be your guardian in the event a court decides that a guardian should be appointed, complete PART THREE. A court will appoint a guardian for you if the court finds that you are not able to make significant responsible decisions for yourself regarding your personal support, safety, or welfare. A court will appoint the person nominated by you if the court finds that the appointment will serve your best interest and welfare. If you have selected a health care agent in PART ONE, you

may (but are not required to) nominate the same person to be your guardian. If your health care agent and guardian are not the same person, your health care agent will have priority over your guardian in making your health care decisions, unless a court determines otherwise.]

[State your preference by initialing (A) or (B). Choose (A) only if you have also completed PART ONE.]

(A) _____ (Initials) I nominate the person serving as my health care agent under PART ONE to serve as my guardian.

OR

(B) _____ (Initials) I nominate the following person to serve as my guardian:

Name: _____

Address: _____

Telephone Numbers: _____

(Home, Work, and Mobile)

<p>PART FOUR: EFFECTIVENESS AND SIGNATURES</p>

This advance directive for health care will become effective only if I am unable or choose not to make or communicate my own health care decisions.

This form revokes any advance directive for health care, durable power of attorney for health care, health care proxy, or living will that I have completed before this date.

Unless I have initialed below and have provided alternative future dates or events, this advance directive for health care will become effective at the time I sign it and will remain effective until my death (and after my death to the extent authorized in Section (5) of PART ONE).

_____ (Initials) This advance directive for health care will become effective on or upon _____ and will terminate on or upon _____.

[You must sign and date or acknowledge signing and dating this form in the presence of two witnesses.

Both witnesses must be of sound mind and must be at least 18 years of age, but the witnesses do not have to be together or present with you when you sign this form.

A witness:

- *Cannot be a person who was selected to be your health care agent or back-up health care agent in PART ONE;*
- *Cannot be a person who will knowingly inherit anything from you or otherwise knowingly gain a financial benefit from your death; or*
- *Cannot be a person who is directly involved in your health care.*

Only one of the witnesses may be an employee, agent, or medical staff member of the hospital, skilled nursing facility, hospice, or other health care facility in which you are receiving health care (but this witness cannot be directly involved in your health care).]

By signing below, I state that I am emotionally and mentally capable of making this advance directive for health care and that I understand its purpose and effect.

(Signature of Declarant)

(Date)

The declarant signed this form in my presence or acknowledged signing this form to me. Based upon my personal observation, the declarant appeared to be emotionally and mentally capable of making this advance directive for health care and signed this form willingly and voluntarily.

(Signature of First Witness)

(Date)

Print Name: _____

Address: _____

(Signature of Second Witness)

(Date)

Print Name: _____

Address: _____

[This form does not need to be notarized.]”

(Code 1981, § 31-32-4, enacted by Ga. L. 2007, p. 133, § 2/HB 24; Ga. L. 2008, p. 503, § 4/SB 405; Ga. L. 2009, p. 453, § 3-6/HB 228.)

Cross references. — Standby Guardianship Act, § 29-2-9 et seq.

Law reviews. — For survey article on wills, trusts, guardianships, and fiduciary administration, see 59 Mercer L. Rev. 447 (2007). For survey article on wills, trusts,

guardianships, and fiduciary administration, see 60 Mercer L. Rev. 417 (2008). For article, “Three General Principles of Good Drafting,” see 16 (No. 2) Ga. St. B.J. 62 (2010).

31-32-5. Execution; use of form or other forms; witnesses; copies; amendment.

(a) Any person of sound mind who is emancipated or 18 years of age or older may execute a document which:

- (1) Appoints a health care agent;
- (2) Directs the withholding or withdrawal of life-sustaining procedures or the withholding or withdrawal of the provision of nourishment or hydration when the declarant is in a terminal condition or state of permanent unconsciousness; or
- (3) Covers matters contained in both paragraphs (1) and (2) of this subsection.

Such document shall be in writing, signed by the declarant or by some other person in the declarant's presence and at the declarant's express direction, and witnessed in accordance with the provisions of subsection (c) of this Code section.

(b) When a document substantially complying with Code Section 31-32-4 is executed in accordance with this Code section, it shall be treated as an advance directive for health care which complies with this Code section. No provision of this chapter shall be construed to bar a declarant from using any other form of advance directive for health care which complies with this Code section. A document covering any matter contained in paragraph (1), (2), or (3) of subsection (a) of this Code section which was executed in another state and is valid under the laws of the state where executed shall be treated as an advance directive for health care which complies with this Code section.

(c)(1) An advance directive for health care shall be attested and subscribed in the presence of the declarant by two witnesses who are of sound mind and at least 18 years of age, but such witnesses do not have to be together or present when the declarant signs the advance directive for health care.

(2) Neither witness can be a person who:

- (A) Was selected to serve as the declarant's health care agent;
- (B) Will knowingly inherit anything from the declarant or otherwise knowingly gain a financial benefit from the declarant's death; or
- (C) Is directly involved in the declarant's health care.

(3) Not more than one of the witnesses may be an employee, agent, or medical staff member of the health care facility in which the declarant is receiving health care.

(d) A physician or health care provider who is directly involved in the declarant's health care may not serve as the declarant's health care agent.

(e) A copy of an advance directive for health care executed in accordance with this Code section shall be valid and have the same meaning and effect as the original document.

(f) An advance directive for health care may be amended at any time by a written document signed by the declarant or by some other person in the declarant's presence and at the declarant's express direction, and witnessed in accordance with the provisions of subsection (c) of this Code section. (Code 1981, § 31-32-5, enacted by Ga. L. 2007, p. 133, § 2/HB 24.)

Law reviews. — For survey article on administration, see 59 Mercer L. Rev. 447 wills, trusts, guardianships, and fiduciary (2007).

31-32-6. Revocation; declarant's marriage or appointment of a guardian.

(a) An advance directive for health care may be revoked at any time by the declarant, without regard to the declarant's mental state or competency, by any of the following methods:

(1) By completing a new advance directive for health care that has provisions which are inconsistent with the provisions of a previously executed advance directive for health care, living will, or durable power of attorney for health care; provided, however, that such revocation shall extend only so far as the inconsistency exists between the documents and any part of a prior document that is not inconsistent with a subsequent document shall remain unrevoked;

(2) By being obliterated, burned, torn, or otherwise destroyed by the declarant or by some person in the declarant's presence and at the declarant's direction indicating an intention to revoke;

(3) By a written revocation clearly expressing the intent of the declarant to revoke the advance directive for health care signed and dated by the declarant or by a person acting at the declarant's direction. If the declarant is receiving health care in a health care facility, revocation of an advance directive for health care will become effective only upon communication to the attending physician by the declarant or by a person acting at the declarant's direction. The attending physician shall record in the declarant's medical record the time and date when the attending physician received notification of the written revocation; or

(4) By an oral or any other clear expression of the intent to revoke the advance directive for health care in the presence of a witness 18

years of age or older who, within 30 days of the expression of such intent, signs and dates a writing confirming that such expression of intent was made. If the declarant is receiving health care in a health care facility, revocation of an advance directive for health care will become effective only upon communication to the attending physician by the declarant or by a person acting at the declarant's direction. The attending physician shall record in the declarant's medical record the time, date, and place of the revocation and the time, date, and place, if different, when the attending physician received notification of the revocation. Any person, other than the health care agent, to whom an oral or other nonwritten revocation of an advance directive for health care is communicated or delivered shall make all reasonable efforts to inform the health care agent of that fact as promptly as possible.

(b) Unless an advance directive for health care expressly provides otherwise, if after executing an advance directive for health care, the declarant marries, such marriage shall revoke the designation of a person other than the declarant's spouse as the declarant's health care agent, and if, after executing an advance directive for health care, the declarant's marriage is dissolved or annulled, such dissolution or annulment shall revoke the designation of the declarant's former spouse as the declarant's health care agent.

(c) An advance directive for health care which survives disability, incapacity, or incompetency shall not be revoked solely by the appointment of a guardian or receiver for the declarant. Absent an order of the probate court or superior court having jurisdiction directing a guardian of the person to exercise the powers of the declarant under an advance directive for health care which survives disability, incapacity, or incompetency, the guardian of the person has no power, duty, or liability with respect to any health care matters covered by the advance directive for health care; provided, however, that no order usurping the authority of a health care agent known to the proposed guardian shall be entered unless notice is sent by first-class mail to the health care agent's last known address and it is shown by clear and convincing evidence that the health care agent is acting in a manner inconsistent with the power of attorney. (Code 1981, § 31-32-6, enacted by Ga. L. 2007, p. 133, § 2/HB 24.)

Law reviews. — For survey article on administration, see 59 Mercer L. Rev. 447 wills, trusts, guardianships, and fiduciary (2007).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code Section 31-36-6, which was subsequently repealed but was

succeeded by provisions in this Code section are included in the annotations for this Code section.

Revocation held involuntary. — When an attorney-in-fact sought to enjoin the attorney-in-fact's siblings from enforcing a revocation of their parent's durable health care power of attorney, the trial court did not err under former O.C.G.A. § 31-36-6(a) in finding that the revocation had not been voluntary; although the trial court concluded that the parent signed the revocation of the power of attorney, the

trial court also found that the siblings' actions in making plans and removing the parent from the parent's home by force were wrongful and that the siblings knew or should have known that the parent, having been diagnosed with dementia since 2005, lacked the mental capacity and competency to execute the purported revocation in 2006. *Luther v. Luther*, 289 Ga. App. 428, 657 S.E.2d 574 (2008), cert. denied, No. S08C0912, 2008 Ga. LEXIS 520 (Ga. 2008) (decided under former Code Section 31-36-6).

31-32-7. Duties and responsibilities of health care agents.

(a) A health care agent shall not have the authority to make a particular health care decision different from or contrary to the declarant's decision, if any, if the declarant is able to understand the general nature of the health care procedure being consented to or refused, as determined by the declarant's attending physician based on such physician's good faith judgment.

(b) A health care agent shall be under no duty to exercise granted powers or to assume control of or responsibility for the declarant's health care; provided, however, that when granted powers are exercised, the health care agent shall use due care to act for the benefit of the declarant in accordance with the terms of the advance directive for health care. A health care agent shall exercise granted powers in such manner as the health care agent deems consistent with the intentions and desires of the declarant. If a declarant's intentions and desires are unclear, the health care agent shall act in the declarant's best interest considering the benefits, burdens, and risks of the declarant's circumstances and treatment options.

(c) A health care agent may act in person or through others reasonably employed by the health care agent for that purpose but may not delegate authority to make health care decisions.

(d) A health care agent may sign and deliver all instruments, negotiate and enter into all agreements, and do all other acts reasonably necessary to implement the exercise of the powers granted to the health care agent. A health care agent shall be authorized to accompany a declarant in an ambulance or air ambulance if in the opinion of the ambulance personnel protocol permits a passenger and to visit or consult in person with a declarant who is admitted to a health care facility if the health care facility's protocol permits such visitation.

(e) The form of advance directive for health care contained in Code Section 31-32-4 shall, and any different form of advance directive for

health care may, include the following powers, subject to any limitations appearing on the face of the form:

(1) The health care agent is authorized to consent to and authorize or refuse, or to withhold or withdraw consent to, any and all types of medical care, treatment, or procedures relating to the physical or mental health of the declarant, including any medication program, surgical procedures, life-sustaining procedures, or provision of nourishment or hydration for the declarant, but not including psychosurgery, sterilization, or involuntary hospitalization or treatment covered by Title 37;

(2) The health care agent is authorized to admit the declarant to or discharge the declarant from any health care facility;

(3) The health care agent is authorized to contract for any health care facility or service in the name of and on behalf of the declarant and to bind the declarant to pay for all such services, and the health care agent shall not be personally liable for any services or care contracted for or on behalf of the declarant;

(4) At the declarant's expense and subject to reasonable rules of the health care provider to prevent disruption of the declarant's health care, the health care agent shall have the same right the declarant has to examine and copy and consent to disclosure of all the declarant's medical records that the health care agent deems relevant to the exercise of the agent's powers, whether the records relate to mental health or any other medical condition and whether they are in the possession of or maintained by any physician, psychiatrist, psychologist, therapist, health care facility, or other health care provider, notwithstanding the provisions of any statute or other rule of law to the contrary; and

(5) Unless otherwise provided, the health care agent is authorized to direct that an autopsy of the declarant's body be made; to make an anatomical gift of any part or all of the declarant's body pursuant to Article 6 of Chapter 5 of Title 44, the "Georgia Revised Uniform Anatomical Gift Act"; and to direct the final disposition of the declarant's body, including funeral arrangements, burial, or cremation.

(f) A court may remove a health care agent if it finds that the health care agent is not acting properly. (Code 1981, § 31-32-7, enacted by Ga. L. 2007, p. 133, § 2/HB 24; Ga. L. 2008, p. 503, § 4/SB 405.)

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code Section 31-36-10, which was subsequently repealed but was

succeeded by provisions in this Code section, are included in the annotations for this Code section.

Responsibilities. — Trial court properly granted summary judgment to the relative after the home healthcare agency sued the relative for a balance due on a contract the relative signed to have nursing services provided to the relative's father. The relative clearly signed in a representative capacity the contract that the home healthcare agency drafted and pro-

vided for the relative to sign, the principal, the relative's father, was clearly named in the document as such, and it was evident that the contract was substantially in the name of the principal; accordingly, there was no issue for the jury to decide because the contract obligated the father, not the relative, to pay. *Associated Servs. of Accountable Prof'ls, Ltd. v. Workman*, 265 Ga. App. 348, 593 S.E.2d 882 (2004) (decided under former Code Section 31-36-10).

31-32-8. Duties and responsibilities of health care providers.

Each health care provider and each other person with whom a health care agent interacts under an advance directive for health care shall be subject to the following duties and responsibilities:

(1) It is the responsibility of the health care agent or declarant to notify the health care provider of the existence of the advance directive for health care and any amendment or revocation thereof. A health care provider furnished with a copy of an advance directive for health care shall make such copy a part of the declarant's medical records and shall enter in the records any change in or termination of the advance directive for health care by the declarant that becomes known to the health care provider. A health care provider shall grant a health care agent adequate access to a declarant when a declarant is admitted to any health care facility. Whenever a health care provider believes a declarant is unable to understand the general nature of the health care procedure which the provider deems necessary, the health care provider shall consult with any available health care agent known to the health care provider who then has power to act for the declarant under an advance directive for health care;

(2) A health care decision made by a health care agent in accordance with the terms of an advance directive for health care shall be complied with by every health care provider to whom the decision is communicated, subject to the health care provider's right to administer treatment for the declarant's comfort or alleviation of pain; provided, however, that if the health care provider is unwilling to comply with the health care agent's decision, the health care provider shall promptly inform the health care agent who shall then be responsible for arranging for the declarant's transfer to another health care provider. A health care provider who is unwilling to comply with the health care agent's decision shall provide reasonably necessary consultation and care in connection with the pending transfer;

(3) At the declarant's expense and subject to reasonable rules of the health care provider to prevent disruption of the declarant's health care, each health care provider shall give a health care agent authorized to receive such information under an advance directive for health care the same right the declarant has to examine and copy any part or all of the declarant's medical records that the health care agent deems relevant to the exercise of the health care agent's powers, whether the records relate to mental health or any other medical condition and whether they are in the possession of or maintained by any physician, psychiatrist, psychologist, therapist, health care facility, or other health care provider, notwithstanding the provisions of any statute or rule of law to the contrary; and

(4) If and to the extent an advance directive for health care empowers the health care agent to direct that an autopsy of the declarant's body be made; to make an anatomical gift of any part or all of the declarant's body pursuant to Article 6 of Chapter 5 of Title 44, the "Georgia Revised Uniform Anatomical Gift Act"; or to direct the final disposition of the declarant's body, including funeral arrangements, burial, or cremation, the decisions of the health care agent on such matters shall be deemed the act of the declarant or of the person who has priority under law to make the necessary decisions, and each person to whom a direction by the health care agent in accordance with the terms of the agency is communicated shall comply with such direction to the extent it is in accord with reasonable medical standards or other relevant standards at the time of reference. (Code 1981, § 31-32-8, enacted by Ga. L. 2007, p. 133, § 2/HB 24; Ga. L. 2008, p. 503, § 4/SB 405.)

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code Section 31-36-7, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section.

Notice of limitation. — Since the health care agents did not notify defendant physician of a power of attorney and its proscription against surgery, and the document was not in the patient's hospital chart, the physician could not be held

liable for battery for performing an operation. *Roberts v. Jones*, 222 Ga. App. 548, 475 S.E.2d 193 (1996) (decided under former Code Section 31-36-7).

Right to administer treatment for pain. — Even though a patient executed a power of attorney containing a limitation on "painful" surgery, the patient's physician had the duty to perform an operation to alleviate the patient's undoubted pain and suffering. *Roberts v. Jones*, 222 Ga. App. 548, 475 S.E.2d 193 (1996) (decided under former Code Section 31-36-7).

31-32-9. Conditions precedent to carrying out health care treatment preferences; physician's failure to comply with treatment preferences.

(a) Prior to effecting a withholding or withdrawal of life-sustaining procedures or the withholding or withdrawal of the provision of nourishment or hydration from a declarant pursuant to a declarant's directions in an advance directive for health care, the attending physician:

(1) Shall determine that, to the best of that attending physician's knowledge, the declarant is not pregnant, or if she is, that the fetus is not viable and that the declarant has specifically indicated in the advance directive for health care that the declarant's directions regarding the withholding or withdrawal of life-sustaining procedures or the withholding or withdrawal of the provision of nourishment or hydration are to be carried out;

(2) Shall, without delay after the diagnosis of a terminal condition or state of permanent unconsciousness of the declarant, take the necessary steps to provide for the written certification of the declarant's terminal condition or state of permanent unconsciousness in accordance with the procedure set forth in subsection (b) of this Code section;

(3) Shall make a reasonable effort to determine that the advance directive for health care complies with Code Section 31-32-5; and

(4) Shall make the advance directive for health care and the written certification of the terminal condition or state of permanent unconsciousness a part of the declarant patient's medical records.

(b) The procedure for establishing a terminal condition or state of permanent unconsciousness is as follows: two physicians, one of whom shall be the attending physician, who, after personally examining the declarant, shall certify in writing, based upon conditions found during the course of their examination and in accordance with currently accepted medical standards, that the declarant is in a terminal condition or state of permanent unconsciousness.

(c) The advance directive for health care shall be presumed, unless revoked, to be the directions of the declarant regarding the withholding or withdrawal of life-sustaining procedures or the withholding or withdrawal of the provision of nourishment or hydration.

(d) The attending physician who fails or refuses to comply with the declarant's directions regarding the withholding or withdrawal of life-sustaining procedures or the withholding or withdrawal of the provision of nourishment or hydration shall advise promptly the health

care agent, if one is appointed, and, otherwise, next of kin or legal guardian of the declarant that such physician is unwilling to effectuate such directions. The attending physician shall thereafter at the election of the health care agent, if one is appointed, and, otherwise, next of kin or legal guardian of the declarant:

(1) Make a good faith attempt to effect the transfer of the declarant to another physician who will comply with the declarant's directions regarding the withholding or withdrawal of life-sustaining procedures or the withholding or withdrawal of the provision of nourishment or hydration; or

(2) Permit the health care agent, if one is appointed, and, otherwise, next of kin or legal guardian of the declarant to obtain another physician who will comply with the declarant's directions regarding the withholding or withdrawal of life-sustaining procedures or the withholding or withdrawal of the provision of nourishment or hydration. (Code 1981, § 31-32-9, enacted by Ga. L. 2007, p. 133, § 2/HB 24.)

31-32-10. Immunity from liability or disciplinary action.

(a) Each health care provider, health care facility, and any other person who acts in good faith reliance on any direction or decision by the health care agent shall be protected and released to the same extent as though such person had interacted directly with the declarant as a fully competent person. Without limiting the generality of the foregoing, the following specific provisions shall also govern, protect, and validate the acts of the health care agent and each such health care provider, health care facility, and any other person acting in good faith reliance on such direction or decision:

(1) No such health care provider, health care facility, or person shall be subject to civil or criminal liability or discipline for unprofessional conduct solely for complying with any direction or decision by the health care agent, even if death or injury to the declarant ensues;

(2) No such health care provider, health care facility, or person shall be subject to civil or criminal liability or discipline for unprofessional conduct solely for failure to comply with any direction or decision by the health care agent, as long as such health care provider, health care facility, or person promptly informs the health care agent of such health care provider's, health care facility's, or person's refusal or failure to comply with such direction or decision by the health care agent. The health care agent shall then be responsible for arranging the declarant's transfer to another health care provider. A health care provider who is unwilling to comply with the health

care agent's decision shall continue to provide reasonably necessary consultation and care in connection with the pending transfer;

(3) If the actions of a health care provider, health care facility, or person who fails to comply with any direction or decision by the health care agent are substantially in accord with reasonable medical standards at the time of reference and the provider cooperates in the transfer of the declarant pursuant to paragraph (2) of Code Section 31-32-8, the health care provider, health care facility, or person shall not be subject to civil or criminal liability or discipline for unprofessional conduct for failure to comply with the advance directive for health care;

(4) No health care agent who, in good faith, acts with due care for the benefit of the declarant and in accordance with the terms of an advance directive for health care, or who fails to act, shall be subject to civil or criminal liability for such action or inaction; and

(5) If the authority granted by an advance directive for health care is revoked under Code Section 31-32-6, a person shall not be subject to criminal prosecution or civil liability for acting in good faith reliance upon such advance directive for health care unless such person had actual knowledge of the revocation.

(b) No person shall be civilly liable for failing or refusing in good faith to effectuate the declarant's directions regarding the withholding or withdrawal of life-sustaining procedures or the withholding or withdrawal of the provision of nourishment or hydration.

(c) No physician or any person acting under a physician's direction and no health care facility or any agent or employee thereof who, acting in good faith in accordance with the requirements of this chapter, causes the withholding or withdrawal of life-sustaining procedures or the withholding or withdrawal of the provision of nourishment or hydration from a declarant or who otherwise participates in good faith therein shall be subject to any civil or criminal liability or guilty of unprofessional conduct therefor.

(d) No person who witnesses an advance directive for health care in good faith and in accordance with subsection (c) of Code Section 31-32-5 shall be civilly or criminally liable or guilty of unprofessional conduct for such action.

(e) Any person who participates in the withholding or withdrawal of life-sustaining procedures or the withholding or withdrawal of the provision of nourishment or hydration pursuant to an advance directive for health care and who has actual knowledge that such advance directive for health care has been properly revoked shall not have any civil or criminal immunity otherwise granted under this chapter for

such conduct. (Code 1981, § 31-32-10, enacted by Ga. L. 2007, p. 133, § 2/HB 24.)

31-32-11. Advance directive for health care's relationship to criminal and insurance laws.

(a) The making of an advance directive for health care containing a declarant's directions regarding the withholding or withdrawal of life-sustaining procedures or the withholding or withdrawal of the provision of nourishment or hydration, shall not, for any purpose, constitute a suicide. If the declarant's death results from the withholding or withdrawal of life-sustaining procedures or the withholding or withdrawal of the provision of nourishment or hydration in accordance with the terms of an advance directive for health care, the death shall not constitute a suicide or homicide for any purpose under any statute or other rule of law.

(b) The making of an advance directive for health care shall not restrict, inhibit, or impair in any manner the sale, procurement, issuance, or enforceability of any policy of life insurance, annuity, or other contract that is conditioned on the life or death of the declarant nor shall it be deemed to modify the terms of an existing policy of life insurance, annuity, or other contract that is conditioned on the life or death of the declarant, notwithstanding any term of the policy to the contrary. No policy of life insurance, annuity, or other contract that is conditioned on the life or death of the declarant shall be legally impaired or invalidated in any manner by the making of an advance directive for health care pursuant to this chapter or by the withholding or withdrawal of life-sustaining procedures or the withholding or withdrawal of the provision of nourishment or hydration from an insured declarant, nor shall the making of such an advance directive for health care or the withholding or withdrawal of life-sustaining procedures or the withholding or withdrawal of the provision of nourishment or hydration operate to deny any additional insurance benefits for accidental death of the declarant in any case in which the terminal condition of the declarant is the result of accident, notwithstanding any term of the policy to the contrary. (Code 1981, § 31-32-11, enacted by Ga. L. 2007, p. 133, § 2/HB 24.)

31-32-12. Restriction on requiring and preparing advance directives for health care.

(a) No physician, health care facility, or health care provider and no health care service plan, insurer issuing disability insurance, self-insured employee welfare benefit plan, or nonprofit hospital service plan shall require any person to execute an advance directive for health

care as a condition for being insured for or receiving health care services.

(b) No health care facility shall prepare or offer to prepare an advance directive for health care unless specifically requested to do so by a person desiring to execute an advance directive for health care. For purposes of this subsection, the Department of Corrections shall not be deemed to be a health care facility. (Code 1981, § 31-32-12, enacted by Ga. L. 2007, p. 133, § 2/HB 24.)

31-32-13. Penalties and legal sanctions for violations.

All persons shall be subject to the following sanctions in relation to advance directives for health care, in addition to all other sanctions applicable under any other law or rule of professional conduct:

(1) Any person who, without the declarant's consent, willfully conceals, cancels, or alters an advance directive for health care or any amendment or revocation of the advance directive for health care or who falsifies or forges an advance directive for health care, amendment, or revocation shall be civilly liable and guilty of a misdemeanor;

(2) Any person who falsifies or forges an advance directive for health care of another or who willfully conceals or withholds personal knowledge of an amendment or revocation of an advance directive for health care with the intent to cause a withholding or withdrawal of life-sustaining procedures or the withholding or withdrawal of the provision of nourishment or hydration contrary to the intent of the declarant and thereby, because of such act, directly causes life-sustaining procedures or the provision of nourishment or hydration to be withheld or withdrawn and death thereby to be hastened shall be subject to prosecution for criminal homicide as provided in Chapter 5 of Title 16;

(3) Any person who requires or prevents execution of an advance directive for health care as a condition of ensuring or providing any type of health care services to an individual shall be civilly liable and guilty of a misdemeanor; and

(4) Any person who willfully witnesses an advance directive for health care knowing at the time he or she is not eligible to witness such advance directive under subsection (c) of Code Section 31-32-5 or who coerces or attempts to coerce a person into making an advance directive for health care shall be civilly liable and guilty of a misdemeanor. (Code 1981, § 31-32-13, enacted by Ga. L. 2007, p. 133, § 2/HB 24.)

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code Sections 31-32-10 and 31-36-9, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section.

Written document required for criminal liability. — Contention that

beneficiaries under a will were subject to criminal liability based upon the act of falsifying a living will or health care agency could not be sustained since there was no evidence or allegation that written documents existed. *Edwards v. Shumate*, 266 Ga. 374, 468 S.E.2d 23 (1996) (decided under former O.C.G.A. §§ 31-32-10 and 31-36-9).

31-32-14. Effect of chapter on other legal rights and duties.

(a) Nothing in this chapter shall impair or supersede any legal right or legal responsibility which any person may have to effect the withholding or withdrawal of life-sustaining procedures or the withholding or withdrawal of the provision of nourishment or hydration in any lawful manner.

(b) Nothing in this chapter shall be construed to condone, authorize, or approve mercy killing or to permit any affirmative or deliberate act or omission to end life other than to permit the process of dying as provided in this chapter. Furthermore, nothing in this chapter shall be construed to condone, authorize, or approve abortion.

(c) This chapter shall create no presumption concerning the intention of an individual who has not executed an advance directive for health care to consent to the use or withholding or withdrawal of life-sustaining procedures or the withholding or withdrawal of the provision of nourishment or hydration in the event of a terminal condition or state of permanent unconsciousness.

(d) Except to the extent provided in an advance directive for health care and subject to the health care agent's duty to exercise granted powers in such manner as the health care agent deems consistent with the intentions and desires of the declarant pursuant to subsection (b) of Code Section 31-32-7, a declarant's directions in an advance directive for health care regarding the withholding or withdrawal of life-sustaining procedures or the withholding or withdrawal of the provision of nourishment or hydration shall be ineffective as long as there is a health care agent available and willing to make decisions for and on behalf of the declarant regarding the withholding or withdrawal of life-sustaining procedures or the withholding or withdrawal of the provision of nourishment or hydration when the declarant is in a terminal condition or state of permanent unconsciousness.

(e) Unless an advance directive for health care provides otherwise, a health care agent who is known to a health care provider to be available

and willing to make health care decisions for a declarant has priority over any other person, including any guardian, to act for the declarant in all matters covered by the advance directive for health care.

(f) Nothing in this chapter shall affect the delegation of a parent's power to control the health care of a minor child. (Code 1981, § 31-32-14, enacted by Ga. L. 2007, p. 133, § 2/HB 24.)

CHAPTER 33

HEALTH RECORDS

Sec.		Sec.	
31-33-1.	Definitions.	31-33-6.	Confidential communications.
31-33-2.	Furnishing copy of records to patient, provider, or other authorized person.	31-33-7.	Furnishing copies of psychological or psychiatric evaluation to law enforcement officer upon request.
31-33-3.	Costs of copying and mailing; patient's rights as to records.	31-33-8.	Electronic records; application to psychiatric, psychological, or other mental health records.
31-33-4.	Mental health records.		
31-33-5.	Immunity from liability for releasing information.		

Cross references. — Termination of temporary medical consent guardianship, § 29-4-18.

Editor's notes. — Chapter 32 was added to Title 31 by both Ga. L. 1984, p. 1477, § 1, and by Ga. L. 1984, p. 1680, § 1. The former is set out as Chapter 32 and the latter was redesignated as Chapter 33 by Ga. L. 1985, p. 149, § 31.

Administrative rules and regulations. — Patient referrals and patient records, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Board of Chiropractic Examiners, Sec. 100-7-.07.

Patient records, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Community Health, Georgia Volunteer Health Care Program, Sec. 111-5-1-.10.

Unprofessional conduct defined, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Board of Dentistry, Sec. 150-8-.01.

Unprofessional conduct defined, Official Compilation of the Rules and Regulations of the State of Georgia, State Board of Podiatry Examiners, Sec. 500-8-.01.

RESEARCH REFERENCES

ALR. — Medical malpractice: presumption or inference from failure of hospital or

doctor to produce relevant medical records, 69 ALR4th 906.

31-33-1. Definitions.

As used in this chapter, the term:

(1) "Patient" means any person who has received health care services from a provider.

(2) "Provider" means all hospitals, including public, private, osteopathic, and tuberculosis hospitals; other special care units, including podiatric facilities, skilled nursing facilities, and kidney disease treatment centers, including freestanding hemodialysis units; intermediate care facilities; ambulatory surgical or obstetrical facilities; health maintenance organizations; and home health agencies. It shall also mean any person licensed to practice under Chapter 9, 11, 26, 34, 35, or 39 of Title 43.

(3) "Record" means a patient's health record, including, but not limited to, evaluations, diagnoses, prognoses, laboratory reports, X-rays, prescriptions, and other technical information used in assessing the patient's condition, or the pertinent portion of the record relating to a specific condition or a summary of the record. (Code 1981, § 31-32-1, enacted by Ga. L. 1984, p. 1680, § 1; Code 1981, § 31-33-1, as redesignated by Ga. L. 1985, p. 149, § 31.)

31-33-2. Furnishing copy of records to patient, provider, or other authorized person.

(a)(1)(A) A provider having custody and control of any evaluation, diagnosis, prognosis, laboratory report, or biopsy slide in a patient's record shall retain such item for a period of not less than ten years from the date such item was created.

(B) The requirements of subparagraph (A) of this paragraph shall not apply to:

(i) An individual provider who has retired from or sold his or her professional practice if such provider has notified the patient of such retirement or sale and offered to provide such items in the patient's record or copies thereof to another provider of the patient's choice and, if the patient so requests, to the patient; or

(ii) A hospital which is an institution as defined in subparagraph (A) of paragraph (4) of Code Section 31-7-1, which shall retain patient records in accordance with rules and regulations for hospitals as issued pursuant to Code Section 31-7-2.

(2) Upon written request from the patient or a person authorized to have access to the patient's record under an advance directive for health care or a durable power of attorney for health care for such patient, the provider having custody and control of the patient's record shall furnish a complete and current copy of that record, in accordance with the provisions of this Code section. If the patient is deceased, such request may be made by the following persons:

(A) The executor, administrator, or temporary administrator for the decedent's estate if such person has been appointed;

(B) If an executor, administrator, or temporary administrator for the decedent's estate has not been appointed, by the surviving spouse;

(C) If there is no surviving spouse, by any surviving child; and

(D) If there is no surviving child, by any parent.

(b) Any record requested under subsection (a) of this Code section shall within 30 days of the receipt of a request for records be furnished

to the patient, any other provider designated by the patient, any person authorized by paragraph (2) of subsection (a) of this Code section to request a patient's or deceased patient's medical records, or any other person designated by the patient. Such record request shall be accompanied by:

(1) An authorization in compliance with the federal Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. Section 1320d-2, et seq., and regulations implementing such act; and

(2) A signed written authorization as specified in subsection (d) of this Code section.

(c) If the provider reasonably determines that disclosure of the record to the patient will be detrimental to the physical or mental health of the patient, the provider may refuse to furnish the record; however, upon such refusal, the patient's record shall, upon written request by the patient, be furnished to any other provider designated by the patient.

(d) A provider shall not be required to release records in accordance with this Code section unless and until the requesting person has furnished the provider with a signed written authorization indicating that he or she is authorized to have access to the patient's records by paragraph (2) of subsection (a) of this Code section. Any provider shall be justified in relying upon such written authorization.

(e) Any provider or person who in good faith releases copies of medical records in accordance with this Code section shall not be found to have violated any criminal law or to be civilly liable to the patient, the deceased patient's estate, or to any other person. (Code 1981, § 31-32-2, enacted by Ga. L. 1984, p. 1680, § 1; Code 1981, § 31-33-2, as redesignated by Ga. L. 1985, p. 149, § 31; Ga. L. 2001, p. 1157, § 1; Ga. L. 2002, p. 641, § 2; Ga. L. 2006, p. 494, § 3/HB 912; Ga. L. 2007, p. 133, § 13/HB 24; Ga. L. 2008, p. 12, § 2-32/SB 433.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2006, “and” was added at the end of subparagraph (a)(2)(C), in subsection (b), a comma was deleted following “Code section shall” in the introductory language, and “section” was substituted for “Section” in paragraph (b)(2).

Pursuant to Code Section 28-9-5, in 2008, “by the department” was deleted following “hospitals as issued” in division (a)(1)(B)(ii).

Editor's notes. — Ga. L. 2007, p. 133, § 1/HB 24, not codified by the General Assembly, provides: “(a) The General As-

sembly has long recognized the right of the individual to control all aspects of his or her personal care and medical treatment, including the right to insist upon medical treatment, decline medical treatment, or direct that medical treatment be withdrawn. In order to secure these rights, the General Assembly has adopted and amended statutes recognizing the living will and health care agency and provided statutory forms for both documents.

“(b) The General Assembly has determined that the statutory forms for the living will and durable power of attorney for health care are confusing and inconsis-

tent and that the statutes providing for the living will and health care agency contain conflicting concepts, inconsistent and out-of-date terminology, and confusing and inconsistent requirements for execution. In addition, there is a commendable trend among the states to combine the concepts of the living will and health care agency into a single legal document.

“(c) The General Assembly recognizes that a significant number of individuals representing the academic, medical, legislative, and legal communities, state officials, ethics scholars, and advocacy groups worked together to develop the advance directive for health care contained in this Act, and the collective intent was to create a form that uses understandable and everyday language in order to encourage more citizens of this state to execute advance directives for health care.

“(d) The General Assembly finds that

the clear expression of an individual's decisions regarding health care, whether made by the individual or an agent appointed by the individual, is of critical importance not only to citizens but also to the health care and legal communities, third parties, and families. In furtherance of these purposes, the General Assembly enacts a new Chapter 32 of Title 31, setting forth general principles governing the expression of decisions regarding health care and the appointment of a health care agent, as well as a form of advance directive for health care.”

Law reviews. — For article, “What Every Attorney Should Know About Health Care Law,” see 15 (No. 6) Ga. St. B.J. 17 (2010).

For note on the 2002 amendment of this Code section, see 19 Ga. St. U.L. Rev. 200 (2002).

JUDICIAL DECISIONS

O.C.G.A. § 31-33-2(a)(2) not preempted by 45 C.F.R. § 164.502(g)(4). — O.C.G.A. § 31-33-2(a)(2) is more stringent than, and thus is not preempted by, 45 C.F.R. § 164.502(g)(4) because § 164.502(g)(4) permits an executor, administrator, or some other person authorized to act on behalf of the decedent or his or her estate to obtain protected health information, but the person whom § 31-33-2(a)(2) allows to act on behalf of the deceased individual or the estate is only the executor or administrator if the estate is represented, and only the surviving spouse if one exists and the estate is unrepresented. *Alvista Healthcare Ctr. v. Miller*, 286 Ga. 122, 686 S.E.2d 96 (2009).

Under federal law, decedent's surviving spouse entitled to decedent's medical records. — Nursing home was obliged to release a decedent's medical records to the decedent's surviving spouse who was pursuing a wrongful death action since under O.C.G.A. §§ 31-33-2(a)(2)(B) and 51-4-2 the spouse was authorized to access those records, and the trial court's order requiring the release of the records complied with the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191. *Alvista Healthcare*

Ctr., Inc. v. Miller, 296 Ga. App. 133, 673 S.E.2d 637 (2009).

Court of appeals did not err in affirming an order granting a surviving spouse a temporary restraining order and permanent injunction requiring the owner of a nursing care facility to release a decedent's medical records and a declaratory judgment that the spouse was entitled to the records pursuant to O.C.G.A. § 31-33-2(a)(2)(B) because the spouse was entitled to access the decedent's protected health information in accordance with 45 C.F.R. § 164.502(g)(4) when § 31-33-2(a)(2)(B) authorized a surviving spouse to act on behalf of the decedent or the estate in obtaining medical records; except for mental health records and any records which remained privileged or confidential, all of the decedent's protected health information was relevant to the limited personal representation granted to a surviving spouse by § 31-33-2(a)(2)(B), and the spouse, by qualifying for that limited personal representation and requesting medical records which the spouse was authorized to request by virtue of such representation, had met every requirement of 45 C.F.R. § 164.502(g)(4). *Alvista Healthcare Ctr. v. Miller*, 286 Ga. 122, 686 S.E.2d 96 (2009).

Because the evident purpose of O.C.G.A. § 31-33-2(a)(2), when read in conjunction with § 31-33-2(b)(1), is to identify several persons, the executor or administrator being the first choice and the surviving spouse being the second, who have authority to submit an authorization in compliance with the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, and to obtain medical records on behalf of the decedent or the decedent's estate, § 31-33-2(a)(2) constitutes the applicable state law to which 45 C.F.R. § 164.502(g)(4) refers, and § 31-33-2(a)(2)(B) necessarily implies that, when there is no executor or administrator, the surviving spouse is granted authority to act on behalf of the decedent or his or her estate with respect to requests for medical records. *Alvista Healthcare Ctr. v. Miller*, 286 Ga. 122, 686 S.E.2d 96 (2009).

O.C.G.A. § 31-33-2(a)(2) treats the surviving spouse as a personal representative in lieu of the executor or administrator with respect to requests for medical records and § 31-33-2(a)(2)(B) establishes a limited personal representation in the surviving spouse for the express purpose of obtaining the decedent's medical records in compliance with the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, the Georgia statute does not provide for personal representation by the surviving spouse for other purposes, but the statute permits the spouse to obtain all types of medical records, other than mental health records as excepted by O.C.G.A. § 31-33-4, and subject to the preservation

in O.C.G.A. § 31-33-6 of the privileged or confidential nature of communications recognized in other laws, and therefore, § 31-33-2(a)(2) is carefully tailored to provide the authority contemplated by 45 C.F.R. § 164.502(g)(4). *Alvista Healthcare Ctr. v. Miller*, 286 Ga. 122, 686 S.E.2d 96 (2009).

45 C.F.R. § 164.502(g)(4) does not require that the person having authority to act on behalf of the decedent or his or her estate and requesting medical records must intend to make future use of those records in his or her fiduciary capacity as a personal representative because when the person having authority to act on behalf of the decedent or the estate makes a request for medical records which is within the scope of that authority, the very request constitutes an action in that person's capacity as a limited personal representative, and such request is the only action which can come within the limited personal representation established by O.C.G.A. § 31-33-2(a)(2) for the purpose of obtaining medical records; once the medical records are obtained by a person authorized by state law to act on behalf of the decedent or the estate by requesting them, 45 C.F.R. § 164.502(g)(4) does not restrict the future use of those records, and after obtaining the medical records, therefore, the surviving spouse may pursue a wrongful death claim, he or she may seek appointment as administrator in order to bring a survival action on behalf of the estate pursuant to O.C.G.A. § 51-4-5(b), he or she may do both or may do neither. *Alvista Healthcare Ctr. v. Miller*, 286 Ga. 122, 686 S.E.2d 96 (2009).

OPINIONS OF THE ATTORNEY GENERAL

Refusing copies of reports to applicant for disability retirement benefits. — If the medical board of the Employees Retirement System determines that the examining physician has met the criteria of subsection (c) of O.C.G.A.

§ 31-33-2 in recommending nondisclosure of medical records prepared in the evaluation of a claim for disability retirement benefits, it is appropriate to refuse copies of those reports to the applicant who was examined. 1992 Op. Att'y Gen. No. 92-19.

31-33-3. Costs of copying and mailing; patient's rights as to records.

(a) The party requesting the patient's records shall be responsible to the provider for the costs of copying and mailing the patient's record. A charge of up to \$20.00 may be collected for search, retrieval, and other direct administrative costs related to compliance with the request under this chapter. A fee for certifying the medical records may also be charged not to exceed \$7.50 for each record certified. The actual cost of postage incurred in mailing the requested records may also be charged. In addition, copying costs for a record which is in paper form shall not exceed \$.75 per page for the first 20 pages of the patient's records which are copied; \$.65 per page for pages 21 through 100; and \$.50 for each page copied in excess of 100 pages. All of the fees allowed by this Code section may be adjusted annually in accordance with the medical component of the consumer price index. The Office of Planning and Budget shall be responsible for calculating this annual adjustment, which will become effective on July 1 of each year. To the extent the request for medical records includes portions of records which are not in paper form, including but not limited to radiology films, models, or fetal monitoring strips, the provider shall be entitled to recover the full reasonable cost of such reproduction. Payment of such costs may be required by the provider prior to the records being furnished. This subsection shall not apply to records requested in order to make or complete an application for a disability benefits program.

(b) The rights granted to a patient or other person under this chapter are in addition to any other rights such patient or person may have relating to access to a patient's records; however, nothing in this chapter shall be construed as granting to a patient or person any right of ownership in the records, as such records are owned by and are the property of the provider. (Code 1981, § 31-32-3, enacted by Ga. L. 1984, p. 1680, § 1; Code 1981, § 31-33-3, as redesignated by Ga. L. 1985, p. 149, § 31; Ga. L. 2001, p. 1157, § 2.)

Editor's notes. — On June 29, 2010, the Office of Planning and Budget issued a statement authorizing an increase in the fees authorized by this Code section, effective July 1, 2010, as follows: search, retrieval, and other direct administrative costs, up to \$25.88; certification fee, up to \$9.70 per record; copying costs for records

in paper form, per page for pages 1-20, \$.97, per page for pages 21-100, \$.83, and per page for pages over 100, \$.66.

Law reviews. — For article, "Trial Practice and Procedure," see 53 Mercer L. Rev. 475 (2001). For survey article on workers' compensation law, see 60 Mercer L. Rev. 433 (2008).

JUDICIAL DECISIONS

Companies providing photocopying services were subject to the provision

requiring hospitals to furnish patients' records for the "reasonable costs of copy-

ing and mailing.” *Cotton v. Med-Cor Health Info. Solutions, Inc.*, 221 Ga. App. 609, 472 S.E.2d 92 (1996).

Workers’ Compensation Board regulated photocopying charges. — Because the Georgia Workers’ Compensation Board, and not the Health Records Act, O.C.G.A. § 31-33-3, regulated the medical photocopying charges in workers’ compensation proceedings, the trial court prop-

erly dismissed a declaratory judgment complaint filed by a photocopier, which sought guidance regarding the appropriate fee structure for medical photocopying services in workers’ compensation proceedings, for failure to state a claim upon which relief could be granted. *Smart Document Solutions, LLC v. Hall*, 290 Ga. App. 483, 659 S.E.2d 838 (2008).

31-33-4. Mental health records.

The provisions of this chapter, except as otherwise provided in Code Sections 31-33-7 and 31-33-8, shall not apply to psychiatric, psychological, or other mental health records of a patient. (Code 1981, § 31-32-4, enacted by Ga. L. 1984, p. 1680, § 1; Code 1981, § 31-33-4, as redesignated by Ga. L. 1985, p. 149, § 31; Ga. L. 2010, p. 286, § 18/SB 244.)

The 2010 amendment, effective July 1, 2010, inserted “, except as otherwise provided in Code Sections 31-33-7 and 31-33-8,” in the middle of this Code section.

Cross references. — Right of mental patients to examine medical records, §§ 37-3-162, 37-3-167.

31-33-5. Immunity from liability for releasing information.

Any provider releasing information in good faith pursuant to the provisions of this chapter shall not be civilly or criminally liable to the patient, guardian, parent, or any other person for such release. (Code 1981, § 31-32-5, enacted by Ga. L. 1984, p. 1680, § 1; Code 1981, § 31-33-5, as redesignated by Ga. L. 1985, p. 149, § 31.)

31-33-6. Confidential communications.

Nothing in this chapter shall be construed as destroying or diminishing the privileged or confidential nature of any communication now or hereafter recognized by law. (Code 1981, § 31-32-6, enacted by Ga. L. 1984, p. 1680, § 1; Code 1981, § 31-33-6, as redesignated by Ga. L. 1985, p. 149, § 31.)

JUDICIAL DECISIONS

Cited in *Stoneridge Properties, Inc. v. Kuper*, 178 Ga. App. 409, 343 S.E.2d 424 (1986).

31-33-7. Furnishing copies of psychological or psychiatric evaluation to law enforcement officer upon request.

(a) Notwithstanding the provisions of Code Section 31-33-4, if a law enforcement officer employed by a governmental entity is required to submit to a psychological or psychiatric examination for the purpose of assessing the law enforcement officer's fitness for duty, employment status, or assignment of duties, then, upon the written request of the law enforcement officer, the employer shall furnish to the law enforcement officer a complete copy of the evaluation or report.

(b) Any employer or health care provider furnishing or making a report or evaluation in good faith pursuant to the provisions of this Code section shall not be civilly or criminally liable to the law enforcement officer or any other person for furnishing or making such report or evaluation.

(c) If an employer reasonably determines that disclosure of the evaluation or report to the law enforcement officer will be detrimental to the mental health of the law enforcement officer, would present a risk of harm to other persons, would involve the disclosure of confidential information or would violate the privacy of a third party, then the employer may refuse to furnish the record of evaluation; provided, however, that upon such refusal the evaluation or report shall, upon written request by the law enforcement officer, be furnished by the employer to a psychiatrist or psychologist treating the law enforcement officer. (Code 1981, § 31-33-7, enacted by Ga. L. 1998, p. 1499, § 1.)

Cross references. — Employment and training of peace officers, T. 35, C. 8. to Code Section 28-9-5, in 1998, “; provided,” was substituted for “provided;” in subsection (c).
Code Commission notes. — Pursuant

31-33-8. Electronic records; application to psychiatric, psychological, or other mental health records.

(a) Notwithstanding any other provision of the law to the contrary, any provider may, in its sole discretion, create, maintain, transmit, receive, and store records in an electronic format within the meaning of Code Section 10-12-2 and may, in its sole discretion, temporarily or permanently convert records into an electronic format.

(b) A provider shall not be required to maintain separate tangible copies of electronically stored records.

(c) The other provisions of this chapter shall apply to electronic records to the same extent as those provisions apply to tangible records.

(d) This Code section is subject to all applicable federal laws governing the security and confidentiality of a patient's personal health information.

(e) A tangible copy of a record reproduced from an electronically stored record shall be considered an original for purposes of providing copies to patients or other authorized parties and for introduction of the records into evidence in administrative or court proceedings.

(f) Except as provided otherwise under federal law, upon receiving a request for a copy of a record from a patient or an authorized person under Code Section 31-33-3, a provider shall provide copies of the record in either tangible or electronically stored form.

(g) Subsections (a), (b), (d) and (e) of this Code section shall apply to psychiatric, psychological, or other mental health records of a patient. (Code 1981, § 31-33-8, enacted by Ga. L. 2005, p. 618, § 1/SB 204; Ga. L. 2009, p. 698, § 4/HB 126; Ga. L. 2010, p. 286, § 19/SB 244.)

The 2010 amendment, effective July 1, 2010, redesignated the former second sentence of subsection (c) as present subsection (d); redesignated former subsections (d) and (e) as present subsections (e)

and (f), respectively; and added subsection (g).

Cross references. — Georgia Electronic Records and Signatures Act, § 10-12-1 et seq.

CHAPTER 34

PHYSICIANS FOR RURAL AREAS ASSISTANCE

Sec.		Sec.	
31-34-1.	Short title.		nation of physician underserved rural areas.
31-34-2.	Purpose and intent of chapter.		
31-34-3.	Administration by Georgia Board for Physician Workforce.	31-34-6.	Contract between applicant and state agreeing to terms and conditions of loan; breach of contract; service cancelable contracts.
31-34-4.	Loan applicant qualifications; rules and regulations.		
31-34-4.1.	Grants to hospitals and other entities; use of funds; rules and regulations authorized.	31-34-7.	Cancellation of contract.
		31-34-8.	Funding.
31-34-5.	Service cancelable loan; amount; repayment; determi-	31-34-9.	Biennial report to General Assembly.

Cross references. — Physicians, T. 43, C. 34.

Administrative rules and regulations. — Physicians for rural areas assistance program, Official Compilation of the Rules and Regulations of the State of Georgia, State Medical Education Board of Georgia, Chapter 355-3.

NHSC Grant Program, Official Compilation of the Rules and Regulations of the State of Georgia, State Medical Education Board of Georgia, Chapter 355-4.

Georgia Medical Fair, Official Compilation of the Rules and Regulations of the State of Georgia, State Medical Education Board of Georgia, Chapter 355-5.

31-34-1. Short title.

This chapter shall be known and may be cited as the “Physicians for Rural Areas Assistance Act.” (Code 1981, § 31-34-1, enacted by Ga. L. 1989, p. 1234, § 1; Ga. L. 2010, p. 322, § 1/HB 866.)

Editor’s notes. — Ga. L. 2010, p. 322, § 1/HB 866, effective July 1, 2010, reenacted this Code section without change.

31-34-2. Purpose and intent of chapter.

It is the purpose of this chapter to increase the number of physicians in physician underserved rural areas of Georgia by making loans to physicians who have completed their medical education and allowing such loans to be repaid by such physicians agreeing to practice medicine in such rural areas and by making grants to hospitals and, as determined by the Georgia Board for Physician Workforce, other health care entities, local governments, and civic organizations in physician underserved rural areas of Georgia that agree to provide matching funds to the grant, with the intent to enhance recruitment efforts in bringing physicians to such areas. It is the intent of the General Assembly that if funds are available to the Georgia Board for Physician

Workforce to make loans, grants, or scholarships under this chapter or under other applicable state law, the Georgia Board for Physician Workforce shall give priority to loans and scholarships under Part 6 of Article 7 of Chapter 3 of Title 20 and to loans under Code Section 31-34-4. (Code 1981, § 31-34-2, enacted by Ga. L. 1989, p. 1234, § 1; Ga. L. 2006, p. 152, § 2B/HB 1178; Ga. L. 2009, p. 8, § 31/SB 46; Ga. L. 2010, p. 322, § 1/HB 866; Ga. L. 2011, p. 459, § 2/HB 509.)

The 2010 amendment, effective July 1, 2010, added “and by making grants to hospitals and, as determined by the State Medical Education Board, other health care entities, local governments, and civic organizations in physician underserved rural areas of Georgia that agree to provide matching funds to the grant, with the intent to enhance recruitment efforts in bringing physicians to such areas” at the

end of the first sentence and added the second sentence.

The 2011 amendment, effective July 1, 2011, substituted “Georgia Board for Physician Workforce” for “State Medical Education Board” throughout this Code section.

Law reviews. — For article on 2006 amendment of this Code section, see 23 Ga. St. U.L. Rev. 197 (2006).

31-34-3. Administration by Georgia Board for Physician Workforce.

This chapter shall be administered by the Georgia Board for Physician Workforce, and, as used in this chapter, the word “board” means the Georgia Board for Physician Workforce created in Code Section 49-10-1. (Code 1981, § 31-34-3, enacted by Ga. L. 1989, p. 1234, § 1; Ga. L. 2010, p. 322, § 1/HB 866; Ga. L. 2011, p. 459, § 2/HB 509.)

The 2011 amendment, effective July 1, 2011, substituted “Georgia Board for Physician Workforce” for “State Medical Education Board” twice, and substituted “Code Section 49-10-1” for “Code Section 20-3-510” at the end.

Editor’s notes. — Ga. L. 2010, p. 322, § 1/HB 866, effective July 1, 2010, reenacted this Code section without change.

31-34-4. Loan applicant qualifications; rules and regulations.

(a) A physician who receives a loan under the program provided for in this chapter shall be a citizen or national of the United States licensed to practice medicine within the State of Georgia at the time the loan is made, and shall be a graduate of an accredited graduate medical education program located in the United States which has received accreditation or provisional accreditation by the Accreditation Council for Graduate Medical Education or the American Osteopathic Association.

(b) The board shall make a full investigation of the qualifications of an applicant for a loan under the provisions of this chapter to determine the applicant’s fitness for participation in such loan program, and for such purposes, the board may propound such examinations to appli-

cants as the board deems proper. The board's investigation shall include a determination of the outstanding medical education loans incurred by the applicant while completing his or her medical education and training.

(c) The board is authorized to consider among other criteria for granting loans under the provisions of this chapter the state residency status and home area of the applying physician and to give priority to those applicants who are physicians actively practicing or beginning active practice in specialties experiencing shortages or distribution problems in rural areas of this state as determined by the board pursuant to rules and regulations adopted by it in accordance with this chapter.

(d) The board may adopt and prescribe such rules and regulations as it deems necessary or appropriate to administer and carry out the loan program provided for in this chapter. Such rules and regulations shall provide for fixing the rate of regular interest to accrue on loans granted under the provisions of this chapter. Such regular rate of interest shall not exceed by more than 2 percent the prime rate published from time to time by the Board of Governors of the Federal Reserve System. Within such limitation, the regular rate of interest may be increased for new recipients of loans under this chapter. (Code 1981, § 31-34-4, enacted by Ga. L. 1989, p. 1234, § 1; Ga. L. 2006, p. 152, § 2C/HB 1178; Ga. L. 2009, p. 859, § 2/HB 509; Ga. L. 2010, p. 322, § 1/HB 866.)

The 2010 amendment, effective July 1, 2010, substituted the present provisions of subsection (a) for the former provisions, which read: "A physician who receives a loan under the program provided for in this chapter shall be licensed to practice medicine within the State of Georgia at the time the loan is made and shall be a graduate of an accredited four-year medical school located in the United States which has received accred-

itation or provisional accreditation by the Liaison Committee on Medical Education of the American Medical Association or the Bureau of Professional Education of the American Osteopathic Association for a program of education designed to qualify the graduate for licensure by the Georgia Composite Medical Board."

Law reviews. — For article on 2006 amendment of this Code section, see 23 Ga. St. U.L. Rev. 197 (2006).

31-34-4.1. Grants to hospitals and other entities; use of funds; rules and regulations authorized.

(a) After providing priority consideration to granting loans pursuant to Code Section 31-34-4, the board is authorized to make grants to hospitals and, as determined by the board, other health care entities, local governments, and civic organizations in physician underserved rural areas of Georgia, provided that any such hospital, health care entity, local government, or civic organization matches such grant in an amount not less than such grant. Such grants shall be for the purpose of enhancing recruitment efforts in bringing physicians to such areas.

(b) Acceptable expenditures of grant funds by a hospital or other health care entity, local government, or civic organization include, but are not limited to, medical education loan repayment, salary supplements for physicians, and additional support staff for a physician's office. Grant funds shall not be used for hiring or paying a recruiting firm or individual recruiter.

(c) The board is authorized to give priority over other grant applicants to applicant hospitals and other health care entities, local governments, and civic organizations in rural areas of this state experiencing shortages or distribution problems of certain specialties as determined by the board pursuant to rules and regulations adopted by the board in accordance with this chapter.

(d) The board may adopt and prescribe such rules and regulations as it deems necessary or appropriate to administer and carry out the grant program provided for in this chapter. Such rules and regulations shall provide for the criteria that must be met by an applicant and the penalties that shall be incurred for failure to comply with the grant requirements. (Code 1981, § 31-34-4.1, enacted by Ga. L. 2010, p. 322, § 1/HB 866.)

Effective date. — This Code section became effective July 1, 2010.

31-34-5. Service cancelable loan; amount; repayment; determination of physician underserved rural areas.

(a)(1) The board shall have the authority to grant to each applicant approved by the board on a one-year renewable basis a service cancelable loan for a period not exceeding four years. The amount of the loan shall be determined by the board, but such amount shall be related to the applicant's outstanding obligations incurred as a direct result of completing medical education and training.

(2) A loan or loans to each approved applicant shall be granted on the condition that the full amount of the loan or loans shall be repaid to the State of Georgia in services to be rendered by the applicant's practicing his or her profession in a board approved physician underserved rural area of Georgia. For each full year of practicing his or her profession in such a physician underserved rural area, the physician who obtained the loan shall receive credit for the full amount of one year's loan plus regular interest which accrued on such amount.

(b)(1) The board shall have the authority to make grants to each applicant hospital or other health care entity, local government, or civic organization approved by the board on a yearly basis, renewable each year at the discretion of the board. The amount of the grant shall

be determined by the board, but such amount shall be related to and shall not exceed the applicant's proposed expenditures to enhance recruitment efforts in bringing one or more physicians to the physician underserved rural area.

(2) A grant to an approved applicant shall be made on any condition or conditions determined by the board, which may include, but not be limited to, that one or more physicians are employed and retained in the physician underserved rural area for a prescribed minimum length of time.

(c) In making a determination of physician underserved rural areas of Georgia, the board shall seek the advice and assistance of the Department of Public Health, the University of Georgia Cooperative Extension Service, the Department of Community Affairs, and such other public or private associations or organizations as the board determines to be of assistance in making such determinations. Criteria to determine physician underserved rural areas shall include, but shall not be limited to, relevant statistical data related to the following:

- (1) The ratio of physicians to population in the area;
- (2) Indications of the health status of the population in the area;
- (3) The poverty level and dependent age groups of the population in the area;
- (4) Indications of community support for more physicians in the area; and
- (5) Indications that access to the physician's services is available to every person in the underserved area regardless of ability to pay. (Code 1981, § 31-34-5, enacted by Ga. L. 1989, p. 1234, § 1; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2010, p. 322, § 1/HB 866; Ga. L. 2011, p. 459, § 3/HB 509; Ga. L. 2011, p. 705, § 6-3/HB 214.)

The 2010 amendment, effective July 1, 2010, designated the previously existing provisions of subsection (a) as paragraph (a)(1); redesignated the former provisions of subsection (b) as paragraph (a)(2); and added subsection (b).

The 2011 amendments. — The first 2011 amendment, effective July 1, 2011, deleted "the Georgia Board for Physician Workforce," preceding "the University" in

the introductory language of subsection (c). The second 2011 amendment, effective July 1, 2011, substituted "Department of Public Health" for "Department of Community Health" in the introductory language of subsection (c).

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

31-34-6. Contract between applicant and state agreeing to terms and conditions of loan; breach of contract; service cancelable contracts.

(a)(1) Before being granted a service cancelable loan provided for in this chapter, each applicant therefor shall enter into a contract with the State of Georgia agreeing to the terms and conditions upon which the loan is granted, which contract shall include such terms and conditions as will carry out the purposes and intent of this chapter. The chairperson of the board and the executive director of the board, acting for and on behalf of the State of Georgia, shall execute the contract for the board. The contract shall also be properly executed by the applicant. The board is vested with full and complete authority to bring an action in its own name against any recipient of a loan under the provisions of this chapter for the performance of the contract and to collect any amount that may be due under the contract.

(2) Any recipient of a loan under the provisions of this chapter who breaches the contract for such loan by either failing to begin or failing to complete the rural practice service obligation under the contract shall be immediately liable to the board for twice the total uncredited amount of all loans contracted for with the recipient, such uncredited amount to be prorated on a monthly basis respecting the recipient's actual service rendered and the total service obligation. For compelling reasons provided for in rules or regulations of the board, the board may agree to and accept a lesser measure of damages for the breach of a contract.

(b)(1) Before receiving a grant under this chapter, each approved applicant hospital or other health care entity, local government, or civic organization shall enter into a service cancelable contract with the State of Georgia agreeing to the terms and conditions upon which the grant is made, which contract shall include such terms and conditions as will carry out the purposes and intent of this chapter. The chairperson of the board and the executive director of the board, acting for and on behalf of the State of Georgia, shall execute the contract for the board. The contract shall also be properly executed by the applicant. The board is vested with full and complete authority to bring an action in its own name against any recipient of a grant under the provisions of this chapter for the performance of the contract and to collect any amount that may be due under the contract.

(2) Any recipient of a grant under the provisions of this chapter who breaches the contract for such grant shall be liable for the measure of damages specified in the contract for the breach of such contract. (Code 1981, § 31-34-6, enacted by Ga. L. 1989, p. 1234, § 1; Ga. L. 2010, p. 322, § 1/HB 866.)

The 2010 amendment, effective July 1, 2010, designated the previously existing provisions of subsection (a) as paragraph (a)(1); in paragraph (a)(1), substituted “chairperson” for “chairman” near

the beginning of the second sentence; designated the former provisions of subsection (b) as paragraph (a)(2); and added subsection (b).

31-34-7. Cancellation of contract.

(a) The board shall have the authority to cancel the contract of any recipient of a loan under this chapter for cause deemed sufficient by the board, provided that such authority shall not be arbitrarily or unreasonably exercised. Upon such cancellation, the total uncredited amount paid to the recipient shall at once become due and payable to the board in cash, and interest at the rate of 12 percent per annum shall accrue on such total uncredited amount from the date of cancellation to the date of payment.

(b) The board shall have the authority to cancel the contract of any recipient of a grant under this chapter for cause deemed sufficient by the board, provided that such authority shall not be arbitrarily or unreasonably exercised. Upon such cancellation, the grant recipient shall not be eligible to receive further grant funds pursuant to this chapter. (Code 1981, § 31-34-7, enacted by Ga. L. 1989, p. 1234, § 1; Ga. L. 2010, p. 322, § 1/HB 866.)

The 2010 amendment, effective July 1, 2010, designated the existing provi-

sions as subsection (a); and added subsection (b).

31-34-8. Funding.

The funds necessary to carry out the loan and grant program authorized by this chapter may come from funds made available to the board from private, federal, state, or local sources. Funds appropriated by the General Assembly for the purposes of this chapter shall be appropriated to the Department of Community Health for the specific purpose of the cancelable loan and grant program authorized by this chapter. The board shall be assigned to the Department of Community Health for administrative purposes only, except that such department shall prepare and submit the budget for that board in concurrence with that board. (Code 1981, § 31-34-8, enacted by Ga. L. 1989, p. 1234, § 1; Ga. L. 1999, p. 296, § 10; Ga. L. 2010, p. 322, § 1/HB 866.)

The 2010 amendment, effective July 1, 2010, in the first and second sentences, substituted “loan and grant program” for

“loan program”, and substituted “state, or local” for “or state” near the end of the first sentence.

31-34-9. Biennial report to General Assembly.

The board shall make a biennial report to the General Assembly of its activities under the provisions of this chapter. Such report shall include the name of each recipient of a loan made under the provisions of this chapter, the amount of each such loan, and the rural area in which the recipient is practicing medicine. Such report shall include the name of each recipient of a grant made under the provisions of this chapter, the amount of each such grant, and the rural area in which the recipient is located. Such report shall also report the amount of administrative expenses incurred by the board in carrying out the provisions of this chapter. (Code 1981, § 31-34-9, enacted by Ga. L. 1989, p. 1234, § 1; Ga. L. 2010, p. 322, § 1/HB 866.)

The 2010 amendment, effective July 1, 2010, added the third sentence.

CHAPTER 35

VACCINATIONS FOR FIREFIGHTERS, EMERGENCY
MEDICAL TECHNICIANS, AND PUBLIC
SAFETY OFFICERS

Article 1

General Provisions

Sec.

31-35-11. Vaccinations for emergency responders; exemption provided by physician; priority; administration and implementation; funding.

Sec.

- 31-35-1. Legislative finding.
- 31-35-2. Definitions.
- 31-35-3. Voluntary vaccinations for hepatitis B; screening for hepatitis C.

Article 2

Bioterrorism Protection for
Emergency Responders

- 31-35-10. Definitions.

Code Commission notes. — This chapter, which was enacted as Chapter 34 of Title 31, was renumbered as Chapter 35

pursuant to Code Section 28-9-5 in light of the previous enactment of a Chapter 34 by Ga. L. 1989, p. 1234.

JUDICIAL DECISIONS

Sovereign immunity. — Sovereign immunity of a county was not waived by O.C.G.A. Ch. 35, T. 31 since the law does not create a general duty for counties to vaccinate officers. The chapter only requires vaccination at the request of an employee. *Diaz v. Gwinnett County*, 225 Ga. App. 807, 485 S.E.2d 42 (1997).

Official immunity of county employees was not waived since there was no evidence that the employees acted maliciously, willfully, or corruptly in connection with the failure of a police officer to be vaccinated against hepatitis B. *Diaz v. Gwinnett County*, 225 Ga. App. 807, 485 S.E.2d 42 (1997).

ARTICLE 1

GENERAL PROVISIONS

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2003, Code Sections 31-35-1 through 31-35-3 were

designated as Article 1 of Chapter 35 of Title 31.

31-35-1. Legislative finding.

The General Assembly finds and declares that, by reason of their employment, firefighters, emergency medical technicians, and public safety officers are required to work in the midst of and are subject to exposure to infectious diseases, especially hepatitis B and hepatitis C;

that the United States Centers for Disease Control and Prevention have estimated that 200,000 persons in the United States are infected each year with hepatitis B and of that number 25 percent become ill, 10,000 require hospitalization, and 5,000 die; that it is estimated that there are from 500,000 to 1,000,000 infectious hepatitis B carriers in the United States, of which up to 80 percent of such chronic carriers are unaware that they have hepatitis B and are capable of spreading it; that 3.9 million Americans are infected with chronic hepatitis C; that 350,000 to 450,000 new cases of chronic hepatitis C occur each year; that there is no known cure for hepatitis B or hepatitis C and for firefighters, emergency medical technicians, and public safety officers, there is no way of knowing who among those being helped at an accident, a fire, or any incident are hepatitis B or hepatitis C carriers. The General Assembly further finds and declares that all the aforementioned conditions exist and arise out of or in the course of such employment. (Code 1981, § 31-35-1, enacted by Ga. L. 1989, p. 1780, § 1; Ga. L. 1998, p. 1499, § 2; Ga. L. 2012, p. 775, § 31/HB 942.)

The 2012 amendment, effective May 1, 2012, part of an Act to revise, modernize, and correct the Code, substituted

“Centers for Disease Control and Prevention” for “Centers for Disease Control” in the first sentence.

31-35-2. Definitions.

As used in this chapter, the term:

(1) “Emergency medical technician” means an emergency medical technician as defined in Code Section 31-11-2.

(2) “Fire department” means a service group (paid or volunteer) that is organized and trained for the prevention and control of loss of life and property from fire or other emergency.

(3) “Firefighter” means an individual who is assigned by a fire department to fire-fighting activity and is required to respond to alarms and perform emergency action at the location of a fire, a hazardous materials emergency, or other emergency incident.

(4) “Public safety officer” means an individual sworn to enforce the criminal laws of this state or any county or municipality of this state. (Code 1981, § 31-35-2, enacted by Ga. L. 1989, p. 1780, § 1.)

31-35-3. Voluntary vaccinations for hepatitis B; screening for hepatitis C.

Any active firefighter, emergency medical technician, or public safety officer who may be exposed to hepatitis B or hepatitis C during a period while the firefighter, emergency medical technician, or public safety officer is engaged in the performance of his or her duties shall at the

request of the firefighter, emergency medical technician, or public safety officer be vaccinated for protection against hepatitis B or screened for exposure to hepatitis C. The cost, after the payment by any third-party payor, of such vaccination or screening shall be paid by the county, municipality, or other person or entity employing such firefighter, emergency medical technician, or public safety officer or by the governing authority of the county in the case of a volunteer firefighter. (Code 1981, § 31-35-3, enacted by Ga. L. 1989, p. 1780, § 1; Ga. L. 1998, p. 1499, § 3.)

ARTICLE 2

BIOTERRORISM PROTECTION FOR EMERGENCY RESPONDERS

Cross references. — Domestic terrorism, § 16-4-10. Bioterrorism and public health emergencies, §§ 31-12-1.1, 38-3-3.

31-35-10. Definitions.

As used in this article, the term:

(1) “Bioterrorism” means the intentional use, to cause or attempt to cause death, disease, or other biological malfunction in any living organism, of any of the following:

(A) Microorganism;

(B) Virus;

(C) Infectious substance; or

(D) Biological product that may be engineered as a result of biotechnology or any naturally occurring or bioengineered component of any microorganism, virus, infectious substance, or biological product.

(2) “Commissioner” means the commissioner of public health.

(3) “Department” means the Department of Public Health.

(4) “Disaster location” means any geographical location where a bioterrorism attack, terrorist attack, catastrophic event, natural disaster, or emergency occurs.

(5) “Emergency responder” means any person employed as state or local law enforcement personnel, fire department personnel, corrections officers, or emergency medical personnel who may be deployed to a bioterrorism attack, terrorist attack, catastrophic event, natural disaster, or emergency. (Code 1981, § 31-35-10, enacted by Ga. L. 2003, p. 569, § 4; Ga. L. 2009, p. 453, §§ 1-4, 1-6/HB 228; Ga. L. 2011, p. 705, §§ 6-3, 6-5/HB 214.)

The 2011 amendment, effective July 1, 2011, substituted “commissioner of public health” for “commissioner of community health” in paragraph (2) and substituted “Department of Public Health” for

“Department of Community Health” in paragraph (3).

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

31-35-11. Vaccinations for emergency responders; exemption provided by physician; priority; administration and implementation; funding.

(a) The department shall offer a vaccination program for emergency responders who may be exposed to infectious diseases when deployed to a disaster location. The program shall include diseases for which vaccinations are recommended by the United States Public Health Service and in accordance with the Federal Emergency Management Directors Policy and may include, but not be limited to, vaccinations for hepatitis A, hepatitis B, diphtheria-tetanus, influenza, and pneumococcal.

(b) An emergency responder shall be exempt from vaccination when a written statement from a licensed physician is presented to the department indicating that a vaccine is medically contraindicated for that person or the emergency responder signs a written statement that the administration of a vaccination conflicts with his or her personal choice or religious beliefs.

(c) In the event of a vaccine shortage, the commissioner, in consultation with the Governor and the federal Centers for Disease Control and Prevention, shall use federal recommendations to determine the priority for vaccinations for emergency responders.

(d) The department shall notify emergency responders of the availability of the vaccination program and the risks associated with such vaccinations and shall provide educational materials to emergency responders on ways to prevent exposure to infectious diseases.

(e) The department may contract with county and local health departments, not for profit home health care agencies, hospitals, physicians, or other licensed health care organizations to administer the vaccination program for emergency responders.

(f) The vaccination program established pursuant to this article shall be implemented only upon receipt of federal funding or grants for aid available and approved for purposes under this article.

(g) The department shall take all necessary steps to apply for federal funding to implement the vaccination program under this article including use of an expedited application procedure if circumstances

require such. The department shall also amend the state plan if necessary to meet federal funding requirements. (Code 1981, § 31-35-11, enacted by Ga. L. 2003, p. 569, § 4.)

CHAPTER 36

DURABLE POWER OF ATTORNEY FOR HEALTH CARE

Sec.

31-36-1 through 31-36-13 [Repealed].

31-36-1 through 31-36-13.

Reserved. Repealed by Ga. L. 2007, p. 133, § 3/HB 24, effective July 1, 2007.

Editor's notes. — This chapter consisted of Code Sections 31-36-1 through 31-36-13, relating to durable power of attorney for health care, and was based on Ga. L. 1990, p. 1101, § 1; Ga. L. 1999, p. 81, § 31; Ga. L. 1999, p. 485, § 6; Ga. L. 1999, p. 485, § 7. The former chapter was incorporated into Chapter 32 of this title by Ga. L. 2007, p. 133, § 2/HB 24, effective July 1, 2007.

CHAPTER 36A

TEMPORARY HEALTH CARE PLACEMENT DECISION
MAKER FOR AN ADULT

Sec.	Sec.
31-36A-1. Short title.	
31-36A-2. Legislative finding.	
31-36A-3. Definitions.	
31-36A-4. Construction of chapter in relation to Title 37.	31-36A-7. Petition for order by health care facility; issuance, expiration, and limited authorization of order; effect on other laws; immunity from liability or disciplinary action.
31-36A-5. Certification by physician.	
31-36A-6. Persons authorized to consent; expiration of authorization; limitations on authority to con-	sent; effect on other laws; immunity from liability or disciplinary action.

Law reviews. — For article, “Medical Decision-Making in Georgia,” see 10 Ga. St. B.J. 50 (2005).

31-36A-1. Short title.

This chapter shall be known and may be cited as the “Temporary Health Care Placement Decision Maker for an Adult Act.” (Code 1981, § 31-36A-1, enacted by Ga. L. 1999, p. 485, § 5.)

31-36A-2. Legislative finding.

(a) The General Assembly recognizes that there may be occasions when an adult has not made advance arrangements for a situation when he or she is unable to consent to his or her own admission to or discharge from one health care facility or placement or transfer to another health care facility or placement. Under these circumstances, the General Assembly further recognizes that it may be necessary and in the adult’s best interest to be admitted to or discharged from one health care facility or placement or transferred to an alternative facility or placement.

(b) In recognition of the findings in subsection (a) of this Code section, the General Assembly declares that the laws of the State of Georgia shall provide for the most appropriate placement available for these individuals and shall declare an order of priority for those persons who may make the decision to transfer, admit, or discharge such adults at the appointed times and a procedure for obtaining authorization from the court in the absence of a person authorized to consent. (Code 1981, § 31-36A-2, enacted by Ga. L. 1999, p. 485, § 5.)

31-36A-3. Definitions.

As used in this chapter, the term:

(1) "Absence of a person authorized to consent" means that:

(A) After diligent efforts for a reasonable period of time, no person authorized to consent under the provisions of Code Section 31-36A-6 has been located; or

(B) All such authorized persons located have affirmatively waived their authority to consent or dissent to admission to or discharge from a health care facility or placement or transfer to an alternative health care facility or placement, provided that dissent by an authorized person to a proposed admission, discharge, or transfer shall not be deemed waiver of authority.

(2) "Unable to consent" means that an adult is unable to:

(A) Make rational and competent decisions regarding his or her placement options for health or personal care; or

(B) Communicate such decisions by any means. (Code 1981, § 31-36A-3, enacted by Ga. L. 1999, p. 485, § 5.)

31-36A-4. Construction of chapter in relation to Title 37.

This chapter shall not apply to involuntary examination and hospitalization for treatment of mental illness, which shall continue to be governed by Title 37. (Code 1981, § 31-36A-4, enacted by Ga. L. 1999, p. 485, § 5.)

31-36A-5. Certification by physician.

An attending physician, treating physician, or other physician licensed according to the laws of the State of Georgia, after having personally examined an adult, may certify in the adult's medical records the following:

(1) The adult is unable to consent for himself or herself; and

(2) It is the physician's belief that it is in the adult's best interest to be discharged from a hospital, institution, medical center, or other health care institution providing health or personal care for treatment of any type of physical or mental condition and to be transferred to or admitted to an alternative facility or placement, including, but not limited to, nursing facilities, assisted living communities, personal care homes, rehabilitation facilities, and home and community based programs. (Code 1981, § 31-36A-5, enacted by Ga. L. 1999, p. 485, § 5; Ga. L. 2011, p. 227, § 21/SB 178.)

The 2011 amendment, effective July 1, 2011, inserted "assisted living communities," near the end of paragraph (2).

31-36A-6. Persons authorized to consent; expiration of authorization; limitations on authority to consent; effect on other laws; immunity from liability or disciplinary action.

(a) Upon a physician's certification pursuant to Code Section 31-36A-5, and in addition to such other persons as may be otherwise authorized and empowered, any one of the following persons is authorized and empowered to consent, in the priority order listed below, either orally or otherwise, to such transfer, admission, or discharge:

- (1) Any adult, for himself or herself;
- (2) Any person authorized to give such consent for the adult under an advance directive for health care or durable power of attorney for health care under Chapter 32 of this title;
- (3) Any guardian of the person for his or her ward;
- (4) Any spouse for his or her spouse;
- (5) Any adult child for such person's parent;
- (6) Any parent for such person's adult child;
- (7) Any adult for such person's adult brother or sister;
- (8) Any grandparent for such person's adult grandchild;
- (9) Any adult grandchild for such person's grandparent;
- (10) Any adult uncle or aunt for such person's adult nephew or niece; or
- (11) Any adult nephew or niece for such person's adult uncle or aunt.

(b) Any person authorized and empowered to consent under subsection (a) of this Code section shall, after being informed of the provisions of this Code section, act in good faith to consent to a transfer, admission, or discharge which the patient would have wanted had the patient been able to consent in the circumstances under which such transfer, admission, or discharge is considered or, if the patient's preferences are unknown, which such person believes the patient would have wanted had the patient been able to consent in the circumstances under which such transfer, admission, or discharge is considered. The current health care facility's discharge planner, social worker, or other designated personnel shall assist the person authorized to consent under subsec-

tion (a) of this Code section with identifying the most appropriate, least restrictive level of care available, including home and community based services and available placements, if any, in reasonable proximity to the patient's residence.

(c) The authorization to consent to such transfer, admission, or discharge shall expire upon the earliest of the following:

(1) The completion of the transfer, admission, or discharge and such responsibilities associated with such transfer, admission, or discharge, including, but not limited to, assisting with applications for financial coverage and insurance benefits for health or personal care;

(2) Upon a physician's certification that the adult is able to consent to decisions regarding his or her placements for health or personal care; or

(3) Upon discovery that another person authorized under subsection (a) of this Code section of a higher priority is available who has not affirmatively waived his or her authority to consent or dissent to admission to or discharge from a health care facility or placement or transfer to an alternative health care facility or placement, provided that dissent by such authorized person to a proposed admission, discharge, or transfer shall not be deemed waiver of authority.

(d) The authorization to give consent for transfer, admission, or discharge is limited solely to said transfer, admission, or discharge decision and responsibilities associated with such decision, including providing assistance with financial assistance applications. It does not include the power or authority to perform any other acts on behalf of the adult not expressly authorized in this Code section.

(e) This Code section shall not repeal, abrogate, or impair the operation of any other laws, either federal or state, governing the transfer, admission, or discharge of a person to or from a health care facility or placement. Further, the adult retains all rights provided under laws, both federal and state, as a result of an involuntary transfer, admission, or discharge.

(f) Each certifying physician, discharge planner, social worker, or other hospital personnel or authorized person who acts in good faith pursuant to the authority of this Code section shall not be subject to any civil or criminal liability or discipline for unprofessional conduct. (Code 1981, § 31-36A-6, enacted by Ga. L. 1999, p. 485, § 5; Ga. L. 2007, p. 133, § 14/HB 24.)

Editor's notes. — Ga. L. 2007, p. 133, § 1/HB 24, not codified by the General Assembly, provides: "(a) The General As-

sembly has long recognized the right of the individual to control all aspects of his or her personal care and medical treat-

ment, including the right to insist upon medical treatment, decline medical treatment, or direct that medical treatment be withdrawn. In order to secure these rights, the General Assembly has adopted and amended statutes recognizing the living will and health care agency and provided statutory forms for both documents.

“(b) The General Assembly has determined that the statutory forms for the living will and durable power of attorney for health care are confusing and inconsistent and that the statutes providing for the living will and health care agency contain conflicting concepts, inconsistent and out-of-date terminology, and confusing and inconsistent requirements for execution. In addition, there is a commendable trend among the states to combine the concepts of the living will and health care agency into a single legal document.

“(c) The General Assembly recognizes that a significant number of individuals representing the academic, medical, legis-

lative, and legal communities, state officials, ethics scholars, and advocacy groups worked together to develop the advance directive for health care contained in this Act, and the collective intent was to create a form that uses understandable and everyday language in order to encourage more citizens of this state to execute advance directives for health care.

“(d) The General Assembly finds that the clear expression of an individual's decisions regarding health care, whether made by the individual or an agent appointed by the individual, is of critical importance not only to citizens but also to the health care and legal communities, third parties, and families. In furtherance of these purposes, the General Assembly enacts a new Chapter 32 of Title 31, setting forth general principles governing the expression of decisions regarding health care and the appointment of a health care agent, as well as a form of advance directive for health care.”

31-36A-7. Petition for order by health care facility; issuance, expiration, and limited authorization of order; effect on other laws; immunity from liability or disciplinary action.

(a) In the absence of a person authorized to consent under the provisions of Code Section 31-36A-6, any interested person or persons, including, but not limited to, any authority, corporation, partnership, or other entity operating the health care facility where the adult who is unable to consent is then present, with or without the assistance of legal counsel, may petition the probate court for a health care placement transfer, admission, or discharge order. The petition must be verified and filed in the county where the adult requiring an alternative placement or transfer, admission, or discharge resides or is found, provided that the probate court of the county where the adult is found shall not have jurisdiction to grant the order if it appears that the adult was removed to that county solely for purposes of filing such a petition. The petition shall set forth:

- (1) The name, age, address, and county of the residence of the adult, if known;
- (2) The name, address, and county of residence of the petitioner;
- (3) The relationship of the petitioner to the adult;
- (4) The current location of the adult;

- (5) A physician's certification pursuant to Code Section 31-36A-5;
 - (6) The absence of any person to consent to such transfer, admission, or discharge as authorized by the provisions of Code Section 31-36A-6;
 - (7) Name and address of the recommended alternative health care facility or placement; and
 - (8) A statement of the reasons for such transfer, admission, or discharge as required by subsections (b) and (c) of this Code section.
- (b) The petition shall be supported by the affidavit of an attending physician, treating physician, or other physician licensed according to the laws of the State of Georgia, attesting the following:
- (1) The adult is unable to consent for himself or herself;
 - (2) It is the physician's belief that it is in the adult's best interest to be admitted to or discharged from a hospital, institution, medical center, or other health care institution providing health or personal care for treatment of any type of physical or mental condition or to be transferred to an alternative facility or placement, including, but not limited to, nursing facilities, assisted living communities, personal care homes, rehabilitation facilities, and home and community based programs; and
 - (3) The identified type of health care facility or placement will provide the adult with the recommended services to meet the needs of the adult and is the most appropriate, least restrictive level of care available.
- (c) The petition shall also be supported by the affidavit of the discharging health care facility's discharge planner, social worker, or other designated personnel attesting to and explaining the following:
- (1) There is an absence of a person to consent to such transfer, admission, or discharge as authorized in Code Section 31-36A-6;
 - (2) The recommended alternative facility or placement is the most appropriate facility or placement available that provides the least restrictive and most appropriate level of care and reasons therefor; and
 - (3) Alternative facilities or placements were considered, including home and community based placements and available placements, if any, that were in reasonable proximity to the adult's residence.
- (d) The court shall review the petition and accompanying affidavits and other information to determine if all the necessary information is provided to the court as required in subsections (a), (b), and (c) of this

Code section. The court shall enter an instanter order if the following information is provided:

- (1) The adult is unable to consent for himself or herself;
- (2) There is an absence of any person to consent to such transfer, admission, or discharge as authorized in Code Section 31-36A-6;
- (3) It is in the adult's best interest to be discharged from a hospital, institution, medical center, or other health care institution or placement providing health or personal care for treatment for any type of physical or mental condition and to be admitted or transferred to an alternative facility or placement;
- (4) The recommended alternative facility or placement is the most appropriate facility or placement available that provides the least restrictive and most appropriate level of care; and
- (5) Alternative facilities or placements were considered, including home and community based placements and available placements, if any, in reasonable proximity to the adult's residence.

The order shall authorize the petitioner or the petitioner's designee to do all things necessary to accomplish the discharge from a hospital, institution, medical center, or other health care institution and the transfer to or admission to the recommended facility or placement.

(e) At the same time as issuing the order, the court shall provide a copy of said order to the commissioner of public health.

(f) The order authorizing such transfer, admission, or discharge shall expire upon the earliest of the following:

- (1) The completion of the transfer, admission, or discharge and such responsibilities associated with such transfer, admission, or discharge, including, but not limited to, assisting with the completion of applications for financial coverage and insurance benefits for the health or personal care;
- (2) Upon a physician's certification that the adult is able to understand and make decisions regarding his or her placements for health or personal care and can communicate such decisions by any means; or
- (3) At a time specified by the court not to exceed 30 days from the date of the order.

(g) The order is limited to authorizing the transfer, admission, or discharge and other responsibilities associated with such decision, such as authorizing the application for financial coverage and insurance benefits. It does not include the authority to perform any other acts on behalf of the adult not expressly authorized in this Code section.

(h) This Code section shall not repeal, abrogate, or impair the operation of any other laws, either federal or state, governing the transfer, admission, or discharge of a person to or from a health care facility or placement. Further, such person retains all rights provided under laws, both federal and state, as a result of an involuntary transfer, admission, or discharge.

(i) Each certifying physician, discharge planner, social worker, or other hospital personnel or authorized person who acts in good faith pursuant to the authority of this Code section shall not be subject to any civil or criminal liability or discipline for unprofessional conduct. (Code 1981, § 31-36A-7, enacted by Ga. L. 1999, p. 485, § 5; Ga. L. 2009, p. 453, § 1-6/HB 228; Ga. L. 2011, p. 227, § 22/SB 178; Ga. L. 2011, p. 705, § 6-5/HB 214.)

The 2011 amendments. — The first 2011 amendment, effective July 1, 2011, inserted “assisted living communities,” near the end of paragraph (b)(2). The second 2011 amendment, effective July 1, 2011, substituted “commissioner of public

health” for “commissioner of community health” in subsection (e).

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

CHAPTER 37

HEALTH CARE PERSONNEL

Sec.
31-37-1 through 31-37-3 [Repealed].

31-37-1 through 31-37-3.

Reserved. Repealed by Ga. L. 1999, p. 296, § 11, effective July 1, 1999.

Editor's notes. — Ga. L. 1999, p. 296, § 11, effective July 1, 1999, repealed and reserved the Code sections formerly codified at this chapter. The former chapter, relating to health care personnel, consisted of Code Sections 31-37-1 through 31-37-3 and was based on Ga. L. 1990, p. 1051, § 1; Ga. L. 1992, p. 6, § 31; Ga. L. 1996, p. 6, § 31.

CHAPTER 38

TANNING FACILITIES

Sec.		Sec.	
31-38-1.	Definitions.	31-38-8.	Written report of injury requirement; use of equipment by minors restricted; equipment maintenance requirements; restriction on promoting and advertising certain health-related claims.
31-38-2.	Exemptions from applicability of chapter.	31-38-9.	Noncompliance with chapter.
31-38-3.	Construction, operation, and maintenance requirements.	31-38-10.	Private right of action authorized.
31-38-4.	Warning sign to be posted; contents of warning sign.	31-38-11.	Variance permitted.
31-38-4.1.	Regulation of tanning facilities.	31-38-12.	Effect of chapter on administrator; administrator's immunity from liability.
31-38-5.	Compliance with federal regulations and national electrical code; physical barriers required.		
31-38-6.	Stand-up tanning booth requirements.		
31-38-7.	Protective goggles requirement.		

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1991, Chapter 38 of Title 31, as enacted by Ga. L. 1991, p. 1853, was redesignated as Chapter 39

thereof, since Ga. L. 1991, p. 1411, enacted this chapter, also numbered Chapter 38.

31-38-1. Definitions.

As used in this chapter, the term:

(1) "CFR" means Code of Federal Regulations.

(1.1) "Consumer" means any individual who is provided access to a tanning facility as defined in this chapter.

(2) "Individual" means any human being.

(3) "Operator" means any individual designated by the tanning facility owner or tanning equipment lessee to operate or to assist and instruct the consumer in the operation and use of the tanning facility or tanning equipment.

(4) "Person" means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this state, any other state, or political subdivision or agency thereof, and any legal successor, representative, agent, or agency of these entities.

(5) "Tanning equipment" means ultraviolet or other lamps and equipment containing such lamps intended to induce skin tanning

through the irradiation of any part of the living human body with ultraviolet radiation.

(6) "Tanning facility" means any location, place, area, structure, or business or a part thereof which provides consumers access to tanning equipment. "Tanning facility" includes, but is not limited to, tanning salons, health clubs, apartments, or condominiums regardless of whether a fee is charged for access to the tanning equipment.

(7) "Ultraviolet radiation" means electromagnetic radiation with wavelengths in air between 200 nanometers and 400 nanometers. (Code 1981, § 31-38-1, enacted by Ga. L. 1991, p. 1411, § 2.)

31-38-2. Exemptions from applicability of chapter.

(a) Any person is exempt from the provisions of this chapter to the extent that such person:

(1) Uses equipment which emits ultraviolet radiation incidental to its normal operation; and

(2) Does not use the equipment described in paragraph (1) of this subsection to deliberately expose parts of the living human body to ultraviolet radiation for the purpose of tanning or other treatment.

(b) Any physician licensed by the Georgia Composite Medical Board is exempt from the provisions of this chapter to the extent that such physician uses, in the practice of medicine, medical diagnostic and therapeutic equipment which emits ultraviolet radiation.

(c) Any individual is exempt from the provisions of this chapter to the extent that such individual owns tanning equipment exclusively for personal, noncommercial use. (Code 1981, § 31-38-2, enacted by Ga. L. 1991, p. 1411, § 2; Ga. L. 2009, p. 859, § 2/HB 509.)

31-38-3. Construction, operation, and maintenance requirements.

Each tanning facility in this state shall be constructed, operated, and maintained in accordance with the requirements of Code Sections 31-38-4 through 31-38-8. (Code 1981, § 31-38-3, enacted by Ga. L. 1991, p. 1411, § 2.)

31-38-4. Warning sign to be posted; contents of warning sign.

(a) The facility owner or operator shall conspicuously post the warning sign described in subsection (b) of this Code section within three feet of each tanning station and in such a manner that the sign is clearly visible, not obstructed by any barrier, equipment, or other

object, and can be easily viewed by the consumer before energizing the tanning equipment.

(b) The warning sign required in subsection (a) of this Code section shall use upper and lower case letters which are at least two inches and one inch in height, respectively, and shall have the following wording:

DANGER — ULTRAVIOLET RADIATION

-Follow instruction.

-Avoid overexposure. As with natural sunlight, overexposure can cause eye and skin injury and allergic reactions. Repeated exposure may cause premature aging of the skin and skin cancer.

-Wear protective eyewear.

**FAILURE TO USE PROTECTIVE EYEWEAR
MAY RESULT IN SEVERE BURNS OR
LONG-TERM INJURY TO THE EYES.**

-Medications or cosmetics may increase your sensitivity to the ultraviolet radiation. Consult a physician before using sunlamp or tanning equipment if you are using medications or have a history of skin problems or believe yourself to be especially sensitive to sunlight.

-If you do not tan in the sun, you are unlikely to tan from the use of this product.

**MAXIMUM EXPOSURE AT ANY ONE SESSION
SHOULD NEVER EXCEED 15 MINUTES.**

According to the research and clinical experience of the American Academy of Dermatology, excessive or improper exposure to ultraviolet light can cause harmful changes in the skin and other organs, including skin cancer, cataracts, impairment of the immune system, premature aging, and photosensitivity. These are virtually the same risks associated with outdoor tanning. (Code 1981, § 31-38-4, enacted by Ga. L. 1991, p. 1411, § 2.)

31-38-4.1. Regulation of tanning facilities.

(a) After January 1, 2011, no person shall establish, maintain, or operate a tanning facility without first having registered with the department.

(b) A person shall register under this Code section by submitting a form to the department. The form shall require only the name, address, and telephone number of the tanning facility and owner and the model number and type of each ultraviolet lamp used in the tanning facility.

(c) A registrant shall be required to pay an annual registration fee of \$25.00 per tanning facility and an additional registration fee of \$15.00 per tanning device owned, leased, or otherwise used by the tanning facility. (Code 1981, § 31-38-4.1, enacted by Ga. L. 2010, p. 548, § 2-1/SB 435.)

Effective date. — This Code section became effective July 1, 2010.

Editor's notes. — Ga. L. 2010, p. 548, § 1-1/SB 435, not codified by the General Assembly, provides: "The General Assembly finds that:

"(1) Diabetes is a chronic disease caused by the inability of the pancreas to produce insulin or to use the insulin produced in the proper way;

"(2) If untreated and poorly managed, diabetes has been medically proven to lead to blindness, kidney failure, amputation, heart attack, and stroke;

"(3) Diabetes is the sixth leading cause of death in the United States, responsible for a similar number of deaths each year as HIV/AIDS;

"(4) In Georgia, the prevalence of diabetes is 8 percent higher than the nation as a whole;

"(5) One out of three people with diabetes are not aware that they have the disease;

"(6) Without aggressive societal action, the number of people living with diabetes in Georgia will more than double to 1,697,000 people in the next 20 years, cutting life short for these people by ten to 20 years; and

"(7) Without aggressive societal action, the economic burden of diabetes on the State of Georgia is expected to grow from \$5 billion each year to about \$11.9 billion in the next 20 years."

Ga. L. 2010, p. 548, § 1-2/SB 435, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Diabetes and Health Improvement Act of 2010.'"

31-38-5. Compliance with federal regulations and national electrical code; physical barriers required.

(a) The tanning facility owner or operator shall use only tanning equipment manufactured in accordance with the specifications set forth in 21 CFR 1040.20. The exact nature of compliance shall be based on the standards in effect at the time of manufacture as shown on the device identification label required by 21 CFR 1010.3.

(b) Each assembly of tanning equipment shall be designated for use by only one consumer at a time and shall be equipped with a timer which complies with the requirements of 21 CFR 1040.20(c)(2). The maximum timer interval shall not exceed the manufacturer's maximum recommended exposure time. No timer interval shall have an error exceeding plus or minus 10 percent of the maximum timer interval for the product.

(c) Tanning equipment shall meet the National Fire Protection Association National Electrical Code and shall be provided with ground fault protection on the electrical circuit.

(d) Tanning equipment shall include physical barriers to protect consumers from injury induced by touching or breaking the lamps. (Code 1981, § 31-38-5, enacted by Ga. L. 1991, p. 1411, § 2.)

31-38-6. Stand-up tanning booth requirements.

Tanning booths designed for stand-up use shall also comply with the following additional requirements:

- (1) Booths shall have physical barriers or other means, such as handrails or floor markings, to indicate the proper exposure distance between ultraviolet lamps and the consumer's skin;
- (2) Booths shall be constructed with sufficient strength and rigidity to withstand the stress of use and the impact of a falling person;
- (3) Access to booths shall be of rigid construction with doors which are nonlatching and open outwardly; and
- (4) Booths shall be equipped with handrails and nonslip floors. (Code 1981, § 31-38-6, enacted by Ga. L. 1991, p. 1411, § 2.)

31-38-7. Protective goggles requirement.

(a) The tanning facility owner or operator shall provide protective goggles to each consumer for use during any use of tanning equipment.

(b) The protective goggles required in subsection (a) of this Code section shall meet the requirements of 21 CFR 1040.20(c)(5).

(c) Tanning facility operators shall ensure that consumers wear the protective goggles required by this Code section.

(d) The tanning facility owner or operator shall ensure that the protective goggles required by this Code section are properly sanitized before each use and shall not rely upon exposure to the ultraviolet radiation produced by the tanning equipment itself to provide such sanitizing. (Code 1981, § 31-38-7, enacted by Ga. L. 1991, p. 1411, § 2.)

31-38-8. Written report of injury requirement; use of equipment by minors restricted; equipment maintenance requirements; restriction on promoting and advertising certain health-related claims.

(a) The tanning facility owner or operator shall compile a written report of actual or alleged injury from use of tanning equipment within five working days after occurrence or notice thereof. Such report shall be maintained for a period of not less than three years and shall be available for inspection and copying by any consumer. The report shall include:

- (1) The name of the affected individual;
- (2) The name and location of the tanning facility and identification of the specific tanning equipment involved;

(3) The nature of the actual or alleged injury; and

(4) Any other information relevant to the actual or alleged injury to include the date and duration of exposure.

(b) The tanning facility owner or operator shall not allow minors under 14 years of age to use tanning equipment. The tanning facility owner or operator shall not allow minors 14 years of age or over but under 18 years of age to use tanning equipment unless the minor's parent or legal guardian signs a written consent form meeting the requirements of this Code section. Such consent form shall be signed by the parent or legal guardian at the tanning facility before the minor may use the equipment or facility.

(c) The tanning facility owner or operator shall replace defective or burned out lamps, bulbs, or filters with a type intended for use in the affected tanning equipment as specified on the product label and having the same spectral distribution.

(d) The tanning facility owner or operator shall replace ultraviolet lamps and bulbs, which are not otherwise defective or damaged, at such frequency or after such duration of use as may be recommended by the manufacturer of such lamps and bulbs.

(e) A tanning facility shall not advertise or distribute promotional materials that claim that using a tanning device is safe or free from risk or that the use of a tanning device will result in medical or health benefits. Violation of the provisions of this subsection shall constitute an unfair or deceptive act pursuant to the terms of Part 2 of Article 15 of Chapter 1 of Title 10, the "Fair Business Practices Act of 1975." (Code 1981, § 31-38-8, enacted by Ga. L. 1991, p. 1411, § 2; Ga. L. 2010, p. 548, § 2-2/SB 435.)

The 2010 amendment, effective July 1, 2010, in subsection (b), added "under 14 years of age" after "minors" in the first sentence, and added "The tanning facility owner or operator shall not allow minors 14 years of age or over but under 18 years of age to use tanning equipment" at the beginning of the second sentence; and added subsection (e).

Editor's notes. — Ga. L. 2010, p. 548, § 1-1/SB 435, not codified by the General Assembly, provides: "The General Assembly finds that:

"(1) Diabetes is a chronic disease caused by the inability of the pancreas to produce insulin or to use the insulin produced in the proper way;

"(2) If untreated and poorly managed, diabetes has been medically proven to

lead to blindness, kidney failure, amputation, heart attack, and stroke;

"(3) Diabetes is the sixth leading cause of death in the United States, responsible for a similar number of deaths each year as HIV/AIDS;

"(4) In Georgia, the prevalence of diabetes is 8 percent higher than the nation as a whole;

"(5) One out of three people with diabetes are not aware that they have the disease;

"(6) Without aggressive societal action, the number of people living with diabetes in Georgia will more than double to 1,697,000 people in the next 20 years, cutting life short for these people by ten to 20 years; and

"(7) Without aggressive societal action,

the economic burden of diabetes on the State of Georgia is expected to grow from \$5 billion each year to about \$11.9 billion in the next 20 years.”

Ga. L. 2010, p. 548, § 1-2/SB 435, not

codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘Diabetes and Health Improvement Act of 2010.’”

31-38-9. Noncompliance with chapter.

Any person who leases tanning equipment or who owns a tanning facility as defined by this chapter who operates or permits to be operated that equipment or facility in noncompliance with the requirements of this chapter shall be guilty of a misdemeanor. (Code 1981, § 31-38-9, enacted by Ga. L. 1991, p. 1411, § 2.)

31-38-10. Private right of action authorized.

In addition to any other rights or remedies otherwise provided to consumers by law, any consumer who is damaged by any violation of this chapter may bring an action in superior court to recover a penalty fee of no less than \$1,000.00 and to recover any actual, consequential, or punitive damages the court deems appropriate. Any recovery under this Code section shall also include attorney’s fees and court costs. It is the intent of the General Assembly in this Code section to provide consumers with an additional remedy to encourage enforcement of this chapter through private rights of action. (Code 1981, § 31-38-10, enacted by Ga. L. 1991, p. 1411, § 2.)

31-38-11. Variance permitted.

Any tanning facility which finds that it is not possible to comply with Code Section 31-38-4 may apply to the administrator appointed pursuant to subsection (a) of Code Section 10-1-395 for a variance from the requirements of Code Section 31-38-4. Any such variance granted by the administrator shall be in writing and shall be drawn as narrowly as possible. (Code 1981, § 31-38-11, enacted by Ga. L. 1991, p. 1411, § 2.)

31-38-12. Effect of chapter on administrator; administrator’s immunity from liability.

Nothing contained in this chapter shall be construed as imposing any duty, requirement, or enforcement authority upon the administrator appointed pursuant to Code Section 10-1-395 except as described in Code Section 31-38-11, provided that nothing contained in this chapter shall be construed in any manner as limiting the administrator from exercising any of his duties, powers, or authority under any other law.

The administrator shall not be liable to any person for any reason as a result of granting or failing to grant any variance under Code Section 31-38-11. (Code 1981, § 31-38-12, enacted by Ga. L. 1991, p. 1411, § 2.)

CHAPTER 39

CARDIOPULMONARY RESUSCITATION

Sec.		Sec.	
31-39-1.	Legislative findings and intent.		
31-39-2.	Definitions.		
31-39-3.	Patient presumed to consent to administration of cardiopulmonary resuscitation; patient's order not to resuscitate; health care facilities not required to expand to provide cardiopulmonary resuscitation.	31-39-7.	Liability of persons carrying out in good faith decisions regarding cardiopulmonary resuscitation; notification of next of kin or authorized person of patient by physician refusing to comply with order not to resuscitate.
31-39-4.	Persons authorized to issue order not to resuscitate.	31-39-8.	Effect of order not to resuscitate on life insurance policies.
31-39-5.	Cancellation of order not to resuscitate.	31-39-9.	Effect of chapter on legal rights and responsibilities; right of court to approve order not to resuscitate.
31-39-6.	Revocation of consent to order not to resuscitate.		
31-39-6.1.	Form of order not to resuscitate; bracelet or necklace; revocation or cancellation of order.		

Cross references. — Living wills, T. 31, C. 32.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1991, this chapter, which was designated as Chapter 38 of Title 31, was redesignated as Chapter 39 thereof, since there exists another Chapter 38 of Title 31.

Law reviews. — For annual survey article on domestic relations law, see 45 Mercer L. Rev. 215 (1993). For article, "Medical Decision-Making in Georgia," see 10 Ga. St. B.J. 50 (2005).

For note on 1995 amendments and enactments of Code sections in this chapter, see 12 Ga. St. U.L. Rev. 223 (1995).

31-39-1. Legislative findings and intent.

The General Assembly finds that although cardiopulmonary resuscitation has proved invaluable in the reversal of sudden, unexpected death, it is appropriate for an attending physician, in certain circumstances, to issue an order not to attempt cardiopulmonary resuscitation of a patient where appropriate consent or authorization has been obtained. The General Assembly further finds that there is a need to establish and clarify the rights and obligations of patients, their families or representatives, and health care providers regarding cardiopulmonary resuscitation and the issuance of orders not to resuscitate. The General Assembly further finds that, in the interest of protecting individual autonomy, cardiopulmonary resuscitation in some circumstances may cause loss of patient dignity and unnecessary pain and suffering. In recognition of the considerable uncertainty in the medical and legal professions as to the legality of implementing orders not to resuscitate, in recognition of the request of the Supreme Court of Georgia for legislative guidance in this area, and in recognition of the

dignity and privacy which patients have a right to expect, the General Assembly declares that the laws of the State of Georgia shall recognize the right of patients or other authorized persons to instruct physicians and other health care personnel to refrain from cardiopulmonary resuscitation. (Code 1981, § 31-39-1, enacted by Ga. L. 1991, p. 1853, § 1; Ga. L. 1994, p. 672, § 1.)

31-39-2. Definitions.

As used in this chapter, the term:

(1) “Adult” means any person who is 18 years of age or older, is the parent of a child, or has married.

(2) “Attending physician” means the physician selected by or assigned to a patient to have primary responsibility for the treatment and care of the patient. Where more than one physician share such responsibility, any such physician may act as the attending physician pursuant to this chapter.

(3) “Authorized person” means any one person from the following list in the order of priority as listed below:

(A) Any agent under a durable power of attorney for health care or health care agent under an advance directive for health care appointed pursuant to Chapter 32 of this title;

(B) A spouse;

(C) A guardian over the person appointed pursuant to the provisions of Code Section 29-4-1;

(D) A son or daughter 18 years of age or older;

(E) A parent; or

(F) A brother or sister 18 years of age or older.

(4) “Candidate for nonresuscitation” means a patient who, based on a determination to a reasonable degree of medical certainty by an attending physician with the concurrence of another physician:

(A) Has a medical condition which can reasonably be expected to result in the imminent death of the patient;

(B) Is in a noncognitive state with no reasonable possibility of regaining cognitive functions; or

(C) Is a person for whom cardiopulmonary resuscitation would be medically futile in that such resuscitation will likely be unsuccessful in restoring cardiac and respiratory function or will only restore cardiac and respiratory function for a brief period of time so

that the patient will likely experience repeated need for cardiopulmonary resuscitation over a short period of time or that such resuscitation would be otherwise medically futile.

(5) "Cardiopulmonary resuscitation" means only those measures used to restore or support cardiac or respiratory function in the event of a cardiac or respiratory arrest.

(5.1) "Caregiver" means an unlicensed assistant who provides direct health related care to patients or residents, a proxy caregiver performing health maintenance activities as provided in Code Section 43-26-12, or a person performing auxiliary services in the care of patients as provided in Code Section 43-26-12.

(6) "Decision-making capacity" means the ability to understand and appreciate the nature and consequences of an order not to resuscitate, including the benefits and disadvantages of such an order, and to reach an informed decision regarding the order.

(6.1) "Emergency medical technician" means a person certified as an emergency medical technician, paramedic, or cardiac technician under Chapter 11 of this title.

(7) "Health care facility" means an institution which is licensed as a hospital or nursing home pursuant to Article 1 of Chapter 7 of this title or licensed as a hospice pursuant to Article 9 of Chapter 7 of this title, or a home health agency licensed pursuant to Article 7 of Chapter 7 of this title.

(8) "Minor" means any person who is not an adult.

(8.1) "Nurse" means a person who is a licensed practical nurse as provided in Code Section 43-26-32 or a registered professional nurse as provided in Code Section 43-26-3.

(9) "Order not to resuscitate" means an order not to attempt cardiopulmonary resuscitation in the event a patient suffers cardiac or respiratory arrest, or both.

(10) "Parent" means a parent who has custody of a minor or is the parent of an adult without decision-making capacity.

(11) "Patient" means a person who is receiving care and treatment from an attending physician.

(11.1) "Physician assistant" means a person licensed as a physician assistant pursuant to Article 4 of Chapter 34 of Title 43.

(12) "Reasonably available" means that a person to be contacted can be contacted with diligent efforts by an attending physician, another person acting on behalf of the attending physician, or the health care facility within a reasonable period of time as determined

by the attending physician. (Code 1981, § 31-39-2, enacted by Ga. L. 1991, p. 1853, § 1; Ga. L. 1994, p. 672, § 1; Ga. L. 1995, p. 722, §§ 1, 1.1; Ga. L. 2004, p. 161, § 7; Ga. L. 2007, p. 133, § 15/HB 24; Ga. L. 2011, p. 379, § 1/HB 275.)

The 2011 amendment, effective July 1, 2011, added paragraphs (5.1), (8.1), and (11.1).

Editor's notes. — Ga. L. 2007, p. 133, § 1/HB 24, not codified by the General Assembly, provides: “(a) The General Assembly has long recognized the right of the individual to control all aspects of his or her personal care and medical treatment, including the right to insist upon medical treatment, decline medical treatment, or direct that medical treatment be withdrawn. In order to secure these rights, the General Assembly has adopted and amended statutes recognizing the living will and health care agency and provided statutory forms for both documents.

“(b) The General Assembly has determined that the statutory forms for the living will and durable power of attorney for health care are confusing and inconsistent and that the statutes providing for the living will and health care agency contain conflicting concepts, inconsistent and out-of-date terminology, and confusing and inconsistent requirements for execution. In addition, there is a commendable trend among the states to combine

the concepts of the living will and health care agency into a single legal document.

“(c) The General Assembly recognizes that a significant number of individuals representing the academic, medical, legislative, and legal communities, state officials, ethics scholars, and advocacy groups worked together to develop the advance directive for health care contained in this Act, and the collective intent was to create a form that uses understandable and everyday language in order to encourage more citizens of this state to execute advance directives for health care.

“(d) The General Assembly finds that the clear expression of an individual's decisions regarding health care, whether made by the individual or an agent appointed by the individual, is of critical importance not only to citizens but also to the health care and legal communities, third parties, and families. In furtherance of these purposes, the General Assembly enacts a new Chapter 32 of Title 31, setting forth general principles governing the expression of decisions regarding health care and the appointment of a health care agent, as well as a form of advance directive for health care.”

JUDICIAL DECISIONS

Cited in *Edwards v. Shumate*, 266 Ga. 374, 468 S.E.2d 23 (1996).

31-39-3. Patient presumed to consent to administration of cardiopulmonary resuscitation; patient's order not to resuscitate; health care facilities not required to expand to provide cardiopulmonary resuscitation.

(a) Every patient shall be presumed to consent to the administration of cardiopulmonary resuscitation in the event of cardiac or respiratory arrest, unless there is consent or authorization for the issuance of an order not to resuscitate. Such presumption of consent does not presume that every patient shall be administered cardiopulmonary resuscitation, but rather that every patient agrees to its administration unless it is medically futile.

(b) Every adult shall be presumed to have the capacity to make a decision regarding cardiopulmonary resuscitation unless determined otherwise in writing in the patient's medical record pursuant to this Code section or pursuant to a court order. When an order not to resuscitate is requested by an adult with decision-making capacity, such order shall be presumed, unless revoked pursuant to Code Section 31-39-6, to be the direction of such person regarding resuscitation.

(c) Nothing in this chapter shall require a health care facility, any other facility, or a health care provider to expand its existing equipment and facilities to provide cardiopulmonary resuscitation. (Code 1981, § 31-39-3, enacted by Ga. L. 1991, p. 1853, § 1; Ga. L. 1994, p. 672, § 1.)

31-39-4. Persons authorized to issue order not to resuscitate.

(a) It shall be lawful for the attending physician to issue an order not to resuscitate pursuant to the requirements of this chapter. Any written order issued by the attending physician using the term "do not resuscitate," "DNR," "order not to resuscitate," "no code," or substantially similar language in the patient's chart shall constitute a legally sufficient order and shall authorize a physician, health care professional, nurse, physician assistant, caregiver, or emergency medical technician to withhold or withdraw cardiopulmonary resuscitation. Such an order shall remain effective, whether or not the patient is receiving treatment from or is a resident of a health care facility, until the order is canceled as provided in Code Section 31-39-5 or until consent for such order is revoked as provided in Code Section 31-39-6, whichever occurs earlier. An attending physician who has issued such an order and who transfers care of the patient to another physician shall inform the receiving physician and the health care facility, if applicable, of the order.

(b) An adult person with decision-making capacity may consent orally or in writing to an order not to resuscitate and its implementation at a present or future date, regardless of that person's mental or physical condition on such future date. If the attending physician determines at any time that an order not to resuscitate issued at the request of the patient is no longer appropriate because the patient's medical condition has improved, the physician shall immediately notify the patient.

(c) The appropriate authorized person may, after being informed of the provisions of this Code section, consent orally or in writing to an order not to resuscitate for an adult candidate for nonresuscitation; provided, however, that such consent is based in good faith upon what such authorized person determines such candidate for nonresuscitation

would have wanted had such candidate for nonresuscitation understood the circumstances under which such order is being considered. Where such authorized person is an agent under a durable power of attorney for health care or health care agent under an advance directive for health care appointed pursuant to Chapter 32 of this title, the attending physician may issue an order not to resuscitate a candidate for nonresuscitation pursuant to the requirements of this chapter without the concurrence of another physician, notwithstanding the provisions of paragraph (4) of Code Section 31-39-2.

(d) Any parent may consent orally or in writing to an order not to resuscitate for his or her minor child when such child is a candidate for nonresuscitation. If in the opinion of the attending physician the minor is of sufficient maturity to understand the nature and effect of an order not to resuscitate, then no such order shall be valid without the assent of such minor.

(e) If none of the persons specified in subsections (b), (c), and (d) of this Code section is reasonably available or competent to make a decision regarding an order not to resuscitate, an attending physician may issue an order not to resuscitate for a patient, provided that:

(1) Such physician determines with the concurrence of a second physician, in writing in the patient's medical record, that such patient is a candidate for nonresuscitation;

(2) An ethics committee or similar panel, as designated by the health care facility, concurs in the opinion of the attending physician and the concurring physician that the patient is a candidate for nonresuscitation; and

(3) The patient is receiving inpatient or outpatient treatment from or is a resident of a health care facility other than a hospice or a home health agency. (Code 1981, § 31-39-4, enacted by Ga. L. 1991, p. 1853, § 1; Ga. L. 1994, p. 672, § 1; Ga. L. 1995, p. 10, § 31; Ga. L. 1995, p. 722, §§ 2, 2.1; Ga. L. 2009, p. 298, § 1/HB 69; Ga. L. 2011, p. 379, § 2/HB 275.)

The 2011 amendment, effective July 1, 2011, inserted "nurse, physician assistant, caregiver," in the second sentence of subsection (a).

There Checks and Balances on Terminating the Lives of Children with Disabilities? Should There Be?," see 25 Ga. St. U.L. Rev. 959 (2009).

Law reviews. — For article, "Are

JUDICIAL DECISIONS

Cited in *Edwards v. Shumate*, 266 Ga. 374, 468 S.E.2d 23 (1996).

31-39-5. Cancellation of order not to resuscitate.

(a) An attending physician for whose patient an order not to resuscitate has been issued pursuant to subsection (c), (d), or (e) of Code Section 31-39-4 shall examine that patient at such intervals as determined periodically by the physician to determine whether the patient still qualifies as a candidate for nonresuscitation, unless that order has been canceled or consent thereto revoked as provided in this chapter. That physician shall record such determination in the patient's medical chart. Failure to comply with this subsection shall not invalidate that order.

(b) If the order not to resuscitate was entered pursuant to subsection (c), (d), or (e) of Code Section 31-39-4 and the attending physician who issued the order or, if that attending physician is unavailable, another attending physician, at any time determines that the patient no longer qualifies as a candidate for nonresuscitation, the attending physician or the physician's designee shall immediately include such determination in the patient's chart, cancel the order, and notify the patient, the person who consented to the order, and all health care facility staff responsible for the patient's care of the cancellation.

(c) If an order not to resuscitate was entered pursuant to subsection (c), (d), or (e) of Code Section 31-39-4 and the patient at any time regains decision-making capacity, the attending physician who issued the order or, if that attending physician is unavailable, another attending physician, shall immediately determine if the patient consents to the order not to resuscitate and, if the patient does not so consent, the attending physician or the physician's designee shall cancel the order by an appropriate entry on the record and notify all health care facility staff responsible for the patient's care of the cancellation. (Code 1981, § 31-39-5, enacted by Ga. L. 1991, p. 1853, § 1; Ga. L. 1994, p. 672, § 1; Ga. L. 1995, p. 722, § 2.2.)

31-39-6. Revocation of consent to order not to resuscitate.

(a) A patient may, at any time, revoke his or her consent to an order not to resuscitate by making either a written or an oral declaration or by any other act evidencing a specific intent to revoke such consent which is communicated to or in the presence of an attending physician, nurse, physician assistant, caregiver, health care professional, or emergency medical technician.

(b) Any parent or authorized person may at any time revoke his or her consent to an order not to resuscitate a patient by making either a written or an oral declaration or by any other act evidencing a specific intent to revoke such consent which is communicated to or in the

presence of an attending physician, nurse, physician assistant, caregiver, health care professional, or emergency medical technician.

(c) Any physician who is informed of or provided with a revocation of consent pursuant to this Code section shall, either by himself or herself or by designee, immediately include the revocation in the patient’s chart, cancel the order, and notify any health care facility staff responsible for the patient’s care of the revocation and cancellation. Any member of the nursing staff, or a physician assistant, caregiver, health care professional, or emergency medical technician who is informed of or provided with a revocation of consent pursuant to this Code section shall immediately notify a physician of such revocation. (Code 1981, § 31-39-6, enacted by Ga. L. 1991, p. 1853, § 1; Ga. L. 1994, p. 672, § 1; Ga. L. 1995, p. 722, § 4; Ga. L. 2011, p. 379, § 3/HB 275.)

The 2011 amendment, effective July 1, 2011, substituted “physician, nurse, physician assistant, caregiver, health care professional, or emergency medical technician” for “physician or a member of the nursing staff at the health care facility, a health care professional, or an emergency

medical technician” in subsections (a) and (b); and substituted “nursing staff, or a physician assistant, caregiver, health care professional” for “nursing staff, a health care professional” in the second sentence of subsection (c).

JUDICIAL DECISIONS

Parental consent to a DNR order. — O.C.G.A. § 31-39-6 allows “any parent” to revoke consent to an order not to resuscitate. The result is as follows: one parent may consent. If there is no second parent, if the other parent is not present, or if the other parent simply prefers not to participate in the decision, the consent of one

parent to a DNR order is legally sufficient under the statute. However, if there is a second custodial parent who disagrees with the decision to forego cardiopulmonary resuscitation, the second parent may revoke consent under the terms of subsection (b) of O.C.G.A. § 31-39-6. In re Doe, 262 Ga. 389, 418 S.E.2d 3 (1992).

31-39-6.1. Form of order not to resuscitate; bracelet or necklace; revocation or cancellation of order.

(a) In addition to those orders not to resuscitate authorized elsewhere in this chapter, any physician, health care professional, nurse, physician assistant, caregiver, or emergency medical technician shall be authorized to effectuate an order not to resuscitate for a person who is not a patient in a hospital, nursing home, or licensed hospice if the order is evidenced in writing containing the patient’s name, date of the form, printed name of the attending physician, and signature of the attending physician on a form substantially similar to the following:

“DO NOT RESUSCITATE ORDER

NAME OF PATIENT: _____

THIS CERTIFIES THAT AN ORDER NOT TO RESUSCITATE
HAS BEEN ENTERED ON THE ABOVE-NAMED PATIENT.

SIGNED: _____

ATTENDING PHYSICIAN

PRINTED OR TYPED NAME OF ATTENDING PHYSICIAN: _____

ATTENDING PHYSICIAN'S TELEPHONE NUMBER: _____

DATE: _____"

(b) A person who is not a patient in a hospital, nursing home, or licensed hospice and who has an order not to resuscitate pursuant to this Code section may wear an identifying bracelet on either the wrist or the ankle or an identifying necklace and shall post or place a prominent notice in such person's home. The bracelet shall be substantially similar to identification bracelets worn in hospitals. The bracelet, necklace, or notice shall provide the following information in boldface type:

"DO NOT RESUSCITATE ORDER

Patient's name: _____

Authorized person's name and telephone number, if applicable: _____

Patient's physician's printed name and telephone number: _____

Date of order not to resuscitate: _____"

Any physician, health care professional, nurse, physician assistant, caregiver, or emergency medical technician shall be authorized to regard such a bracelet, necklace, or notice as a legally sufficient order not to resuscitate in the same manner as an order issued pursuant to this chapter unless such person has actual knowledge that such order has been canceled or consent thereto revoked as provided in this chapter.

(c) Any order not to resuscitate evidenced pursuant to subsection (a) or (b) of this Code section may be revoked as provided in Code Section 31-39-6 and may be canceled as provided in Code Section 31-39-5. (Code 1981, § 31-39-6.1, enacted by Ga. L. 1995, p. 722, § 3; Ga. L. 2011, p. 379, § 4/HB 275.)

The 2011 amendment, effective July 1, 2011, in subsection (a), and in the undesignated text following the form in subsection (c), inserted "nurse, physician assistant, caregiver,," in subsection (a), substituted "if the order" for "and the order" near the middle, and substituted "signature of the" for "signed by the" near the end; in subsection (b), in the first sentence, substituted "may wear" for

"shall wear" and added "and shall post or place a prominent notice in such person's home" at the end, in the third sentence, substituted "bracelet, necklace, or notice shall" for "bracelet or necklace shall be on an orange background and", and, in the undesignated text following the form, substituted "bracelet, necklace, or notice" for "bracelet or necklace".

Code Commission notes. — Pursuant

to Code Section 28-9-5, in 1995, "of" was substituted for "or" preceding "this Code section" in subsection (c).

31-39-7. Liability of persons carrying out in good faith decisions regarding cardiopulmonary resuscitation; notification of next of kin or authorized person of patient by physician refusing to comply with order not to resuscitate.

(a) No physician, health care professional, nurse, physician assistant, caregiver, health care facility, other licensed facility, emergency medical technician, or person employed by, acting as the agent of, or under contract with any of the foregoing shall be subject to criminal prosecution or civil liability or be deemed to have engaged in unprofessional conduct for carrying out in good faith a decision regarding cardiopulmonary resuscitation authorized by this chapter by or on behalf of a patient or for those actions taken in compliance with the standards and procedures set forth in this chapter.

(b) No physician, health care professional, nurse, physician assistant, caregiver, health care facility, other licensed facility, emergency medical technician, or person employed by, acting as the agent of, or under contract with any of the foregoing shall be subject to criminal prosecution or civil liability or be deemed to have engaged in unprofessional conduct for providing cardiopulmonary resuscitation to a patient for whom an order not to resuscitate has been issued, provided that such physician or person:

(1) Reasonably and in good faith was unaware of the issuance of an order not to resuscitate; or

(2) Reasonably and in good faith believed that consent to the order not to resuscitate had been revoked or canceled.

(c) No persons shall be civilly liable for failing or refusing in good faith to effectuate an order not to resuscitate. No person shall be subject to criminal prosecution or civil liability for consenting or declining to consent in good faith, on behalf of a patient, to the issuance of an order not to resuscitate pursuant to this chapter.

(d) Any attending physician who fails or refuses to comply with an order not to resuscitate entered pursuant to this chapter shall endeavor to advise promptly the patient, if conscious, or the next of kin or authorized person of the patient that such physician is unwilling to effectuate the order. The attending physician shall thereafter at the election of the next of kin or authorized person:

(1) Make a good faith attempt to effect the transfer of the patient to another physician who will effectuate the order not to resuscitate;
or

(2) Permit the next of kin or authorized person to obtain another physician who will effectuate the order not to resuscitate.

(e) Any emergency medical technician who fails or refuses to comply with an order not to resuscitate entered pursuant to this chapter shall endeavor to advise promptly the patient, if conscious, or the next of kin or authorized person of the patient, if reasonably available, that such emergency medical technician is unwilling to effectuate the order. (Code 1981, § 31-39-7, enacted by Ga. L. 1991, p. 1853, § 1; Ga. L. 1995, p. 722, § 5; Ga. L. 2011, p. 379, § 5/HB 275.)

The 2011 amendment, effective July 1, 2011, in subsections (a) and (b), inserted “nurse, physician assistant, caregiver,” and inserted “other licensed facility”.

31-39-8. Effect of order not to resuscitate on life insurance policies.

(a) No policy of life insurance shall be legally impaired, modified, or invalidated in any manner by the issuance of an order not to resuscitate notwithstanding any term of the policy to the contrary.

(b) A person may not prohibit or require the issuance of an order not to resuscitate for an individual as a condition for such individual's being insured or receiving health care services. (Code 1981, § 31-39-8, enacted by Ga. L. 1991, p. 1853, § 1.)

31-39-9. Effect of chapter on legal rights and responsibilities; right of court to approve order not to resuscitate.

(a) Nothing in this chapter shall impair or supersede any legal right or legal responsibility which any person may have to effect the withholding or withdrawal of cardiopulmonary resuscitation in any lawful manner or affect the validity of orders not to resuscitate issued and implemented under other circumstances. In such respect, the provisions of this chapter are cumulative.

(b) Nothing in this chapter shall be construed to preclude a court of competent jurisdiction from approving the issuance of an order not to resuscitate under circumstances other than those under which such an order may be issued pursuant to this chapter. (Code 1981, § 31-39-9, enacted by Ga. L. 1991, p. 1853, § 1; Ga. L. 1994, p. 672, § 2.)

CHAPTER 40

TATTOO STUDIOS

Sec.		Sec.	
31-40-1.	Definitions.	31-40-6.	Enforcement of chapter; inspection of premises.
31-40-2.	Issuance of permits.	31-40-7.	Criminal penalty.
31-40-3.	Denial, suspension, and revocation of permit.	31-40-8.	Public education program.
31-40-4.	Administrative review of order of county board of health.	31-40-9.	Enactment of more stringent laws.
31-40-5.	Rules and regulations.	31-40-10.	Criminal law not repealed.

31-40-1. Definitions.

As used in this chapter, the term:

(1) “Tattoo” means to mark or color the skin by pricking in, piercing, or implanting indelible pigments or dyes under the skin.

(2) “Tattoo artist” means any person who performs tattooing, except that the term tattoo artist shall not include in its meaning any physician or osteopath licensed under Chapter 34 of Title 43, nor shall it include any technician acting under the direct supervision of such licensed physician or osteopath, pursuant to subsection (a) of Code Section 16-5-71.

(3) “Tattoo studio” means any facility or building on a fixed foundation wherein a tattoo artist performs tattooing. (Code 1981, § 31-40-1, enacted by Ga. L. 1994, p. 446, § 2.)

31-40-2. Issuance of permits.

It shall be unlawful for any person to operate a tattoo studio without having first obtained a valid permit for such studio. Such permits shall be issued by the county board of health or its duly authorized representative, subject to supervision and direction by the Department of Public Health but, where the county board of health is not functioning, the permit shall be issued by the department. A permit shall be valid until suspended or revoked and shall not be transferable with respect to person or location. (Code 1981, § 31-40-2, enacted by Ga. L. 1994, p. 446, § 2; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214.)

The 2011 amendment, effective July 1, 2011, substituted “Department of Public Health” for “Department of Community Health” in the second sentence of this Code section.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

RESEARCH REFERENCES

Am. Jur. 2d. — 58 Am. Jur. 2d, Occupations, Trades, and Professions, § 67.

C.J.S. — 39A C.J.S., Health and Environment, § 65 et seq.

31-40-3. Denial, suspension, and revocation of permit.

The county boards of health may suspend or revoke permits where the health and safety of the public requires such action. When, in the judgment of such board or its duly authorized agents, it is necessary and proper that such application for a permit be denied or that a permit previously granted be suspended or revoked, the applicant or holder of the permit shall be so notified in writing and shall be afforded an opportunity for hearing as provided in Article 1 of Chapter 5 of this title. In the event that such application is finally denied or such permit finally suspended or revoked, the applicant for or holder of such permit shall be given notice in writing, which notice shall specifically state the reasons why the application or permit has been suspended, revoked, or denied. (Code 1981, § 31-40-3, enacted by Ga. L. 1994, p. 446, § 2.)

31-40-4. Administrative review of order of county board of health.

Any person substantially affected by any final order of the county board of health denying, suspending, revoking, or refusing to renew any permit provided under this chapter may secure review thereof by appeal to the department as provided in Article 1 of Chapter 5 of this title. (Code 1981, § 31-40-4, enacted by Ga. L. 1994, p. 446, § 2.)

31-40-5. Rules and regulations.

(a) The Department of Public Health and county boards of health shall have the power to adopt and promulgate rules and regulations to ensure the protection of the public health. Such rules and regulations shall prescribe reasonable standards for health and safety of tattoo studios with regard to:

- (1) Location and cleanliness of facilities;
- (2) Sterilization and Occupational Safety and Health Administration guidelines for the prevention and spread of infectious diseases by all personnel;
- (3) Informed consent by the person receiving a tattoo;
- (4) Procedures for ensuring adequate explanation to consumers of the proper subsequent care of a tattoo; and
- (5) Proper use and maintenance of tattoo equipment, including dyes and pigments.

(b) County boards of health are empowered to adopt and promulgate supplementary rules and regulations consistent with those adopted and promulgated by the department. (Code 1981, § 31-40-5, enacted by Ga. L. 1994, p. 446, § 2; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214.)

The 2011 amendment, effective July 1, 2011, substituted “Department of Public Health” for “Department of Community Health” in the introductory paragraph of subsection (a).

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

31-40-6. Enforcement of chapter; inspection of premises.

The Department of Public Health and the county boards of health and their duly authorized agents are authorized and empowered to enforce compliance with this chapter and the rules and regulations adopted and promulgated under this chapter and, in connection therewith, to enter upon and inspect the premises of a tattoo studio at any reasonable time and in a reasonable manner, as provided in Article 2 of Chapter 5 of this title. (Code 1981, § 31-40-6, enacted by Ga. L. 1994, p. 446, § 2; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214.)

The 2011 amendment, effective July 1, 2011, substituted “Department of Public Health” for “Department of Community Health” at the beginning of this Code section.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

31-40-7. Criminal penalty.

Any person, firm, or corporation operating a tattoo studio without a valid permit or performing tattooing outside of a licensed tattoo studio shall be guilty of a misdemeanor. (Code 1981, § 31-40-7, enacted by Ga. L. 1994, p. 446, § 2.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1994, “licensed” was substituted for “license”.

31-40-8. Public education program.

The Department of Public Health is authorized and directed to develop and institute a program of public education for the purpose of alerting the public to the possible side effects and exposure risks of tattooing. (Code 1981, § 31-40-8, enacted by Ga. L. 1994, p. 446, § 2; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214.)

The 2011 amendment, effective July 1, 2011, substituted “Department of Public Health” for “Department of Community Health” in this Code section.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

31-40-9. Enactment of more stringent laws.

Notwithstanding any other provision of this chapter, the governing authority of any county or municipality may enact more stringent laws governing tattooing. (Code 1981, § 31-40-9, enacted by Ga. L. 1994, p. 446, § 2.)

31-40-10. Criminal law not repealed.

Nothing in this chapter shall be construed to repeal the provisions of Code Section 16-12-5. (Code 1981, § 31-40-10, enacted by Ga. L. 1994, p. 446, § 2.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1994, “chapter” was substituted for “Act”.

CHAPTER 41

LEAD POISONING PREVENTION

Article 1		Sec.
General Provisions		
Sec.		
31-41-1.	Short title.	31-41-11. Legislative findings.
31-41-2.	Legislative findings.	31-41-12. Definitions.
31-41-3.	Definitions.	31-41-13. Notice of lead poisoning hazard.
31-41-4.	Establishment of lead-based paint hazard reduction program; training programs; licensure and certification requirements; written information on renovation; record keeping requirements.	31-41-14. Abatement of lead poisoning hazard.
31-41-5.	Enforcement of chapter; violations.	31-41-15. Owner liability for units constructed prior to 1978.
31-41-6.	Federal regulations; fees; corrective orders; violations.	31-41-16. Certificate evidencing compliance; liability relief.
		31-41-17. Advice regarding cleaning activities in homes occupied by children with elevated blood lead levels.
		31-41-18. Application.
		31-41-19. Rules and regulations.

Article 2

Childhood Lead Exposure Control

31-41-10. Short title.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1994, this chapter, which was designated as Chapter 40 of Title 31, was redesignated as Chapter 41 thereof, since Ga. L. 1994, p. 446 also added a Chapter 40 of Title 31.

Administrative rules and regulations. — Lead based paint hazard management, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Natural Resources, Environmental Protection, Chapter 391-3-24.

RESEARCH REFERENCES

Am. Jur. Proof of Facts. — Lead Poisoning, 46 POF2d 145.

Landlord's Liability for Lead-Based Paint Hazard in Residential Dwelling, 35 POF3d 439.

Am. Jur. Trials. — Childhood

Lead-Based Paint Poisoning Litigation, 66 Am. Jur. Trials 47.

ALR. — Landlord's liability for injury or death of tenant's child from lead paint poisoning, 19 ALR5th 405.

ARTICLE 1

GENERAL PROVISIONS

RESEARCH REFERENCES

Am. Jur. Proof of Facts. — Citizens' Suits Under the Toxic Substances Control Act (TSCA), 50 POF3d 237.

C.J.S. — 39A C.J.S., Health and Environment, §§ 51 et seq., 71. 52 C.J.S., Landlord and Tenant, § 419.

31-41-1. Short title.

This chapter shall be known and may be cited as the "Georgia Lead Poisoning Prevention Act of 1994." (Code 1981, § 31-41-1, enacted by Ga. L. 1994, p. 1617, § 1; Ga. L. 2010, p. 531, § 6/SB 78.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1994, "chapter" was substituted for "Act".

Editor's notes. — Ga. L. 2010, p. 531, § 6/SB 78, effective May 27, 2010, reenacted this Code section without change.

31-41-2. Legislative findings.

(a) The General Assembly finds that childhood lead poisoning is a devastating environmental health hazard to the children of this state. Exposure to even low levels of lead increases a child's risks of developing permanent reading and learning disabilities, intelligence quotient deficiencies, impaired hearing, reduced attention span, hyperactivity, behavior problems, and other neurological problems. It is estimated that thousands of children below the age of six are affected by lead poisoning in Georgia. Childhood lead poisoning is dangerous to the public health, safety, and general welfare.

(b) Childhood lead poisoning is the result of environmental exposure to lead. The most significant source of environmental lead is lead-based paint, particularly in housing built prior to 1978, which becomes accessible to children as paint chips, house dust, and soil contaminated by lead-based paint. The danger posed by lead-based paint hazards can be controlled by abatement, renovation, or interim controls of lead-based paint or by measures to limit exposure to lead-based paint hazards.

(c) It is crucial that the identification of lead hazards and subsequent implementation of interim control, renovation, or abatement procedures be accomplished in a manner that does not result in additional harm to the public or the environment. Improper lead abatement or renovation constitutes a serious threat to persons residing in or otherwise using an affected structure or site, to those performing such work, to the environment, and to the general public.

(d) The General Assembly finds that it is in the public interest to establish minimum standards for the training and certification or licensure of all persons performing lead hazard reduction activities and for inspections, risk assessments, and planning and performance of interim controls, renovation, or abatement measures for such activities. (Code 1981, § 31-41-2, enacted by Ga. L. 1994, p. 1617, § 1; Ga. L. 2010, p. 531, § 6/SB 78.)

The 2010 amendment, effective May 27, 2010, inserted “, renovation,” throughout this Code section; inserted “or renovation” in the second sentence of subsection

(c); and, in subsection (d), substituted “and for inspections” for “, including inspections” near the middle and added “for such activities” at the end.

31-41-3. Definitions.

As used in this chapter, the term:

(1) “Abatement” means any set of measures designed to eliminate lead-based paint hazards, in accordance with standards developed by the board, including:

(A) Removal of lead-based paint and lead contaminated dust, the permanent containment or encapsulation of lead-based paint, the replacement of lead-painted surfaces or fixtures, and the removal or covering of lead contaminated soil; and

(B) All preparation, cleanup, disposal, and postabatement clearance testing activities associated with such measures.

(2) “Accessible surface” means an interior or exterior surface painted with lead-based paint that is accessible for a young child to mouth or chew.

(2.1) “Board” means the Board of Natural Resources of the State of Georgia.

(2.2) “Child-occupied facility” means a building or portion of a building constructed prior to 1978, visited by the same child, six years of age or under, on at least two different days within the same week (Sunday through Saturday period), provided that each day’s visit lasts at least three hours and the combined weekly visit lasts at least six hours. Child-occupied facilities include, but are not limited to, day-care centers, preschools, and kindergarten facilities.

(3) “Department” means the Department of Natural Resources.

(4) “Friction surface” means an interior or exterior surface that is subject to abrasion or friction, including certain window, floor, and stair surfaces.

(5) “Impact surface” means an interior or exterior surface or fixture that is subject to damage by repeated impacts, for example, certain parts of door frames.

(6) "Inspection" means a surface by surface investigation to determine the presence of lead-based paint and the provision of a report explaining the results of the investigation.

(7) "Interim controls" means a measure or set of measures as specified by the board taken by the owner of a structure that are designed to control temporarily human exposure or likely exposure to lead-based paint hazards.

(8) "Lead-based paint" means paint or other surface coatings that contain lead in excess of limits established by board regulation.

(9) "Lead-based paint activities" means the inspection and assessment of lead hazards and the planning, implementation, and inspection of interim controls, renovation, and abatement activities at target housing and child-occupied facilities.

(10) "Lead-based paint hazard" means any condition that causes exposure to lead from lead contaminated dust, lead contaminated soil, or lead contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects as established pursuant to Section 403 of the Toxic Substances Control Act.

(11) "Lead contaminated dust" means surface dust in residential dwellings or in other facilities occupied or regularly used by children that contains an area or mass concentration of lead in excess of levels determined pursuant to Section 403 of the Toxic Substances Control Act.

(12) "Lead contaminated soil" means bare soil on residential real property or on other sites frequented by children that contains lead at or in excess of levels determined to be hazardous to human health pursuant to Section 403 of the Toxic Substances Control Act.

(13) "Lead contaminated waste" means any discarded material resulting from an abatement activity that fails the toxicity characteristics determined by the department.

(13.1) "Lead dust sampling technician" means an individual employed to perform lead dust clearance sampling for renovation as determined by the department.

(14) "Lead firm" means a company, partnership, corporation, sole proprietorship, association, or other business entity that employs or contracts with persons to perform lead-based paint activities.

(15) "Lead inspector" means a person who conducts inspections to determine the presence of lead-based paint or lead-based paint hazards.

(16) "Lead project designer" means a person who plans or designs abatement activities and interim controls.

(17) "Lead risk assessor" means a person who conducts on-site risk assessments of lead hazards.

(18) "Lead supervisor" means a person who supervises and conducts abatement of lead-based paint hazards.

(19) "Lead worker" means any person performing lead hazard reduction activities.

(19.1) "Minor repair and maintenance activities" means activities that disrupt six square feet or less of painted surface per room for interior activities or 20 square feet or less of painted surface for exterior activities where none of the work practices prohibited or restricted as determined by the department are used or where the work does not involve window replacement or demolition of painted surface areas. Jobs performed in the same room within 30 days are considered the same job for purposes of this definition.

(19.2) "Renovation" means the modification of any target housing or child-occupied facility structure or portion thereof, that results in the disturbance of painted surfaces unless that activity is performed as part of an abatement activity. Renovation includes but is not limited to the removal, modification, re-coating, or repair of painted surfaces or painted components; the removal of building components; weatherization projects; and interim controls that disturb painted surfaces. A renovation performed for the purpose of converting a building, or part of a building into target housing or a child-occupied facility is a renovation. Such term shall not include minor repair and maintenance activities.

(19.3) "Renovation firm" means a company, partnership, corporation, sole proprietorship or individual doing business, association, or other business entity that employs or contracts with persons to perform lead-based paint renovations as determined by the department.

(19.4) "Renovator" means an individual who either performs or directs workers who perform renovations.

(20) "Risk assessment" means an on-site investigation to determine and report the existence, nature, severity, and location of lead-based paint hazards in or on any structure or site, including:

(A) Information gathering regarding the age and history of the structure and the occupancy or other use by young children;

(B) Visual inspection;

(C) Limited wipe sampling or other environmental sampling techniques;

(D) Other activity as may be appropriate; and

(E) Provision of a report explaining the results of the investigation.

(21) "Target housing" means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child or children age six years or under resides or is expected to reside in such housing for the elderly or persons with disabilities) or any zero-bedroom dwelling. (Code 1981, § 31-41-3, enacted by Ga. L. 1994, p. 1617, § 1; Ga. L. 1998, p. 248, § 1; Ga. L. 2010, p. 531, § 6/SB 78.)

The 2010 amendment, effective May 27, 2010, added paragraph (2.2); in paragraph (9), inserted ", renovation," in the middle and substituted "at target housing and child-occupied facilities" for "as determined by the department" at the end; and added paragraphs (13.1), (19.1) through (19.4), and (21).

Code Commission notes. — Pursuant

to Code Section 28-9-5, in 1998, "Toxic Substances Control Act" was substituted for "Toxic Substance Control Act" in paragraphs (10), (11), and (12).

U.S. Code. — Section 403 of the Toxic Substances Control Act, referred to in this Code section, is codified at 15 U.S.C. § 2601 et seq.

31-41-4. Establishment of lead-based paint hazard reduction program; training programs; licensure and certification requirements; written information on renovation; record keeping requirements.

(a) There is established the Georgia Lead-Based Paint Hazard Reduction Program. The Department of Natural Resources is designated as the state agency responsible for implementation, administration, and enforcement of such program. The commissioner may delegate such duties to the Environmental Protection Division.

(b) The Board of Natural Resources not later than one year after the effective date of regulations promulgated by the federal Environmental Protection Agency relating to lead paint abatement and renovation certification programs shall issue regulations requiring the development and approval of training programs for the licensing or certification of persons performing lead-based paint hazard detection or lead-based paint activities, which may include, but shall not be limited to, lead inspectors, lead risk assessors, lead project designers, lead firms, lead supervisors, lead workers, lead dust sampling technicians, and renovators. The regulations for the approval of training programs shall include minimum requirements for approval of training providers, curriculum requirements, training hour requirements, hands-on training requirements, examinations of competency and proficiency, and

training program quality control. The approval program shall provide for reciprocal approval of training programs with comparable requirements approved by other states or the United States. The approval program may be designed to meet the minimum requirements for federal approval under Section 404 of the federal Toxic Substances Control Act and the department may apply for such approval. The department shall establish fees for approval of such training programs.

(c)(1) The Board of Natural Resources not later than one year after the effective date of regulations promulgated by the federal Environmental Protection Agency relating to lead paint abatement and renovation certification programs shall establish training and licensure requirements for lead inspectors, lead risk assessors, lead project designers, lead firms, lead supervisors, lead workers, renovators, renovation firms, and lead dust sampling technicians. No person shall be licensed under this chapter unless such person has successfully completed the appropriate training program, passed an examination approved by the department for the appropriate category of license, and completed any additional requirements imposed by the board by regulation. The department is authorized to accept any lead-based paint hazard training completed after January 1, 1990, in full or partial satisfaction of the training requirements. The board may establish requirements for periodic refresher training for all licensees as a condition of license renewal. The board shall establish examination fees, license fees, and renewal fees for all licenses issued under this chapter, provided that such fees shall reflect the cost of issuing and renewing such licenses, regulating licensed activities, and administering the program.

(2) On and after the effective date of regulations promulgated by the board as provided in subsection (b) of this Code section, no person shall perform or represent that such person is qualified to perform any lead-based paint activities unless such person possesses the appropriate licensure or certification as determined by the board or unless such person is:

(A) An owner performing abatement or renovation upon that person's own residential property, unless the residential property is occupied by a person or persons other than the owner or the owner's immediate family while these activities are being performed, or a child residing in the building has been identified as having an elevated blood lead level;

(B) An employee of a property management company doing minor repairs and maintenance activities upon property managed by that company where there is insignificant damage, wear, or corrosion of existing lead-containing paint or coating substances; or

(C) An owner routinely doing minor repairs and maintenance activities upon his or her property where there is insignificant

damage to, wear of, or corrosion of existing lead-containing paint or coating substances.

(3) A person who is employed by a state or county health department or state or federal agency to conduct lead investigations to determine the sources of lead poisonings, as determined by the department, shall be subject to licensing pursuant to paragraph (2) of this subsection as a lead risk assessor but shall not be required to pay any fees as otherwise required under this chapter or under rules and regulations promulgated by the board under this chapter.

(d) The board shall promulgate regulations establishing standards of acceptable professional conduct and work practices for the performance of lead-based paint activities, as well as specific acts and omissions that constitute grounds for the reprimand of any licensee, the suspension, modification, or revocation of a license, or the denial of issuance or renewal of a license.

(e) Written information on the renovation must be provided by the renovation firm or renovator to residents before beginning any renovation activities (except that the written information may be provided after the renovation begins for emergency renovations), in accordance with regulations promulgated by the board.

(f) The lead firm, renovation firm, and renovator must meet record-keeping and reporting requirements established by regulations promulgated by the board. (Code 1981, § 31-41-4, enacted by Ga. L. 1994, p. 1617, § 1; Ga. L. 1996, p. 1140, § 1; Ga. L. 1998, p. 248, § 2; Ga. L. 2010, p. 531, § 6/SB 78.)

The 2010 amendment, effective May 27, 2010, in the first sentence of subsection (b), inserted “and renovation” and substituted “lead workers, lead dust sampling technicians, and renovators” for “and lead workers of such persons” at the end; in the first sentence of paragraph (c)(1), inserted “and renovation” and substituted “lead workers, renovators, renovation firms, and lead dust sampling technicians” for “and lead workers” at the end; inserted “or renovation” near the beginning of subparagraph (c)(2)(A); substituted “minor repairs and maintenance activities” for “routine cleaning and repainting” near the beginning of sub-

paragraph (c)(2)(B); substituted “doing minor repairs and maintenance activities upon” for “cleaning or repainting” near the beginning of subparagraph (c)(2)(C); inserted “and work practices” near the beginning of subsection (d); and added subsections (e) and (f).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1996, “subsection (b)” was substituted for “subparagraph (b)” in paragraph (c)(2).

U.S. Code. — Section 404 of the Toxic Substances Control Act, referred to in this Code section, is codified at 15 USC § 2601 et seq.

31-41-5. Enforcement of chapter; violations.

The Board of Natural Resources shall be authorized to promulgate all necessary regulations for the implementation and enforcement of this

chapter. In addition to any action which may be taken to reprimand a licensee or to revoke or suspend a license, any person who violates any provision of this chapter or any regulation promulgated pursuant to this chapter or any term or condition of licensure may be subject to a civil penalty of not more than \$10,000.00, to be imposed by the department. If any violation is a continuing one, each day of such violation shall constitute a separate violation for the purpose of computing the applicable civil penalty. (Code 1981, § 31-41-5, enacted by Ga. L. 1994, p. 1617, § 1; Ga. L. 1996, p. 1140, § 2; Ga. L. 2010, p. 531, § 6/SB 78.)

Editor's notes. — Ga. L. 2010, p. 531, § 6/SB 78, effective May 27, 2010, reenacted this Code section without change.

31-41-6. Federal regulations; fees; corrective orders; violations.

(a) The department shall make available to all persons licensed or certified under this chapter current federal regulations affecting such licensees or certified persons.

(b) The department is authorized to charge an application fee, a license fee, a license renewal fee, or a similar fee and the amount of such fees shall be established by the Board of Natural Resources. Each fee so established shall be reasonable and shall be determined in such a manner that the total of the fees charged shall approximate the total of the direct and the indirect costs to the state of the operation of the licensing program. Fees may be refunded for good cause as determined by the department.

(c) The department is authorized to issue a corrective order to any person in violation of this chapter or any regulation promulgated pursuant thereto. The order shall specify the provisions of this chapter or any regulation alleged to have been violated and shall order necessary corrective action be taken within a reasonable time to be prescribed in such order.

(d) The department is authorized to revoke or suspend any license, certification, approval, or accreditation issued hereunder, in accordance with regulations promulgated pursuant to this chapter.

(e) It shall be unlawful for any person to engage in training or lead-based paint activities regulated under this chapter except in such a manner as to conform to and comply with this chapter and all applicable regulations and orders established under this chapter.

(f) Any person violating any of the provisions of this chapter shall be guilty of a misdemeanor. (Code 1981, § 31-41-6, enacted by Ga. L. 2011, p. 619, § 2/SB 211.)

Effective date. — This Code section became effective May 12, 2011.

Editor's notes. — Ga. L. 2011, p. 619, § 1/SB 211, not codified by the General Assembly, provides that: "The purpose of this Act is to reenact the provisions of former Code Section 31-41-6, relating to federal regulations copies, fees, corrective orders, and violations relative to lead poisoning prevention," as such Code section

existed immediately prior to its repeal on May 27, 2010, by SB 78."

This Code section formerly pertained to federal regulations, fees, corrective orders, and violations and was based on Code 1981, § 31-41-6, enacted by Ga. L. 1994, p. 1617, § 1; Ga. L. 1998, p. 248, § 3, and was repealed by Ga. L. 2010, p. 531, § 6/SB 78, effective May 27, 2010.

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting not required. — Offenses arising from a violation of O.C.G.A. § 31-41-6 do not, at this time, appear to be

offenses for which fingerprinting is required. 2011 Op. Att'y Gen. No. 11-5.

ARTICLE 2

CHILDHOOD LEAD EXPOSURE CONTROL

31-41-10. Short title.

This article shall be known and may be cited as the "Childhood Lead Exposure Control Act." (Code 1981, § 31-41-10, enacted by Ga. L. 2000, p. 1260, § 1.)

31-41-11. Legislative findings.

(a) The General Assembly finds that childhood lead poisoning prevention activities are currently carried out within the Environmental Health and Injury Prevention, Epidemiology and Prevention, and Laboratory Branches of the Department of Public Health. These activities include lead poisoning case identification, laboratory support, identification of exposure sources, environmental management, and lead hazard reduction. Childhood lead poisoning cases are identified through screening tests conducted by public health clinics and private health care providers and by laboratory reporting of test results. In 1994, lead poisoning was established as a notifiable condition and made part of the Notifiable Disease reporting system.

(b) The General Assembly further finds that the Georgia Public Health Laboratory is licensed and certified to analyze blood specimens for lead. Laboratory services are provided for children screened in public health clinics and for children without health insurance screened by private health care providers. For each reported case of lead poisoning, an environmental investigation is conducted to identify the source of lead. Environmental health specialists assess the primary residence and other locations frequented by the lead poisoned child.

Information is collected from parents and caregivers; on-site surface testing and environmental sample collection and analysis are done as needed. When the lead source is identified, recommendations are made for the mitigation or abatement of the lead hazard. Identified lead poisoning cases are tracked collaboratively by public health nurses and environmental health specialists to assure that appropriate treatment is received and that the child does not reenter the environment where the exposure occurred. (Code 1981, § 31-41-11, enacted by Ga. L. 2000, p. 1260, § 1; Ga. L. 2011, p. 705, § 6-2/HB 214.)

The 2011 amendment, effective July 1, 2011, substituted “Department of Public Health” for “Division of Public Health” at the end of the first sentence of subsection (a).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2000, “lead

poisoned child” was substituted for “lead-poisoned child” at the end of the fourth sentence in subsection (b).

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

31-41-12. Definitions.

As used in this article, the term:

(1) “Confirmed lead poisoning” means a confirmed concentration of lead in whole blood equal to or greater than 20 micrograms of lead per deciliter for a single test or between 15 and 19 micrograms of lead per deciliter in two tests taken at least three months apart.

(2) “Day-care facility” means a structure or structures used as a school, nursery, child care center, clinic, treatment center, or other facility serving the needs of children under six years of age including the grounds, any outbuildings, or other structures appurtenant to the facility.

(3) “Department” means the Department of Public Health.

(4) “Dwelling,” “dwelling unit,” or “residential housing unit” means the interior of a structure, all or part of which is designed or used for human habitation.

(5) “Elevated blood lead level” means a blood lead concentration of ten micrograms per deciliter or greater as determined by the lower of two consecutive blood tests within a six-month period.

(5.1) “Lead hazard abatement” means the removal and correction, in a manner no more strict than what is determined to be absolutely necessary, of a specifically identified hazard which causes a confirmed lead poisoning.

(6) “Lead poisoning hazard” means the presence of readily accessible or mouthable lead-bearing substances measuring 1.0 milligram per square centimeter or greater by X-ray fluorescence or 0.5 percent

or greater by chemical analysis; 100 micrograms per square foot or greater for dust on floors; 500 micrograms per square foot or greater for dust on window sills.

(7) "Lead safe housing" is housing that was built since 1978 or that has been tested by a person who has been licensed or certified by the Board of Natural Resources to perform such testing and either found to have no lead-based paint hazards within the meaning of Title X of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 14 U.S.C. Code Section 185(b)(15) or housing that has been found to meet the requirements of the maintenance standard.

(8) "Maintenance standard" means the following:

(A) Repairing and repainting areas of deteriorated paint inside a residential housing unit;

(B) Cleaning the interior of the unit to a standard of cleaning which is at least customary in the local area at lease origination or as part of the abatement plan, whichever is first, to remove dust that constitutes a lead poisoning hazard;

(C) Adjusting doors and windows to minimize friction or impact on surfaces;

(D) Subject to the occupant's approval, appropriately cleaning any carpets at lease origination or as part of the abatement plan, whichever is first;

(E) Taking such steps as are necessary to ensure that all interior surfaces on which dust might collect are readily cleanable; and

(F) Providing the occupant or occupants all information required to be provided under the Residential Lead-Based Paint Hazard Reduction Act of 1992 and amendments thereto.

(9) "Managing agent" means any person who has charge, care, or control of a building or part thereof in which dwelling units or rooming units are leased.

(10) "Mouthable lead-bearing substance" means any substance on surfaces or fixtures five feet or less from the floor or ground that form a protruding corner or similar edge, protrude one-half inch or more from a flat wall surface, or are freestanding and contain lead contaminated dust at a level that constitutes a lead poisoning hazard. Mouthable surfaces or fixtures include vinyl miniblinds, doors, door jambs, stairs, stair rails, windows, window sills, and baseboards.

(11) "Persistent elevated blood lead level" means a blood lead concentration of 15 to 19 micrograms per deciliter as determined by the lowest of three consecutive blood tests. The first two blood tests

shall be performed within a six-month period, and the third blood test shall be performed at least 12 weeks and not more than six months after the second blood test.

(12) “Readily accessible lead-bearing substance” means any substance containing lead at a level that constitutes a lead poisoning hazard which can be ingested or inhaled by a child under six years of age. Readily accessible substances include deteriorated paint that is peeling, chipping, cracking, flaking, or blistering to the extent that the paint has separated from the substrate. Readily accessible substances also include paint that is chalking.

(13) “Regularly visits” means presence at a dwelling, dwelling unit, school, or day-care facility for at least two days a week for more than three hours per day.

(14) “Supplemental address” means a dwelling, dwelling unit, school, or day-care facility where a child with a persistent elevated blood lead level or a confirmed lead poisoning regularly visits or attends. Supplemental address also means a dwelling, school, or day-care facility where a child resided, regularly visited, or attended within the six months immediately preceding the determination of a persistent elevated blood lead level or a confirmed lead poisoning. (Code 1981, § 31-41-12, enacted by Ga. L. 2000, p. 1260, § 1; Ga. L. 2008, p. 822, § 1/HB 1043; Ga. L. 2011, p. 705, § 5-18/HB 214.)

The 2011 amendment, effective July 1, 2011, substituted “Department” for “Division” in two places in paragraph (3).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2000, “lead-bearing substances” was substituted

for “lead bearing substances” in paragraph (6).

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

31-41-13. Notice of lead poisoning hazard.

Upon determination that a lead poisoning hazard exists, the department shall give written notice of the lead poisoning hazard to the owner of the dwelling, dwelling unit, school, or day-care facility and to all persons residing in or attending the dwelling or facility. The department shall also make every reasonable and practicable effort to provide written notice to the managing agent of the dwelling, dwelling unit, school, or day-care facility. The written notice to the owner, managing agent, or tenant shall include a list of possible methods of abatement of the lead poisoning hazard. (Code 1981, § 31-41-13, enacted by Ga. L. 2000, p. 1260, § 1; Ga. L. 2008, p. 822, § 2/HB 1043; Ga. L. 2011, p. 705, § 6-6/HB 214.)

The 2011 amendment, effective July 1, 2011, substituted “department” for “di-

vision” in the first and second sentences of this Code section.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

31-41-14. Abatement of lead poisoning hazard.

(a) Upon determination that a child less than six years of age has a confirmed lead poisoning and that the child resides in, attends, or regularly visits a dwelling, dwelling unit, school, or day-care facility containing lead poisoning hazards, the department shall require a lead hazard abatement. The department shall also require a lead hazard abatement at the supplemental addresses of a child less than six years of age with a confirmed lead poisoning. Upon confirming that all other potential sources of the confirmed lead poisoning have tested negative and making every reasonable effort to obtain consent from such dwelling's owner or managing agent to comply with this Code section, the department shall solicit a court order from the superior court with jurisdiction over such dwelling to order the dwelling's owner to perform a lead hazard abatement.

(b) When abatement is required under subsection (a) of this Code section, the owner or managing agent shall submit a written lead poisoning hazard abatement plan to the department within 14 days of receipt of the lead poisoning hazard notification and shall obtain written approval of the plan prior to initiating abatement. The lead poisoning hazard abatement plan shall comply with subsection (g) of this Code section. The written plan shall be deemed approved if the department does not respond within 14 days of receipt.

(c) If the abatement plan submitted fails to meet the requirements of this Code section, the department shall issue an abatement order requiring submission of a modified abatement plan. The order shall indicate the modifications which shall be made to the abatement plan and the date by which the plan as modified shall be submitted to the department.

(d) If the owner or managing agent does not submit an abatement plan within 14 days, the department shall issue an abatement order requiring submission of an abatement plan within five days of receipt of the order.

(e) The owner or managing agent shall notify the department and the occupants of the dates of abatement activities at least three days prior to the commencement of abatement activities.

(f) Abatement shall be completed within 60 days of the department's approval of the abatement plan. If the abatement activities are not completed within 60 days as required, the department shall issue an order requiring completion of abatement activities. An owner or man-

aging agent may apply to the department for an extension of the deadline for abatement. The department may issue an order extending the deadline for 30 days upon proper written application by the owner or managing agent.

(g) All lead-containing waste and residue of the abatement of lead shall be removed and disposed of by the person performing the abatement in accordance with applicable federal, state, and local laws and rules.

(h) The department shall verify by visual inspection that the approved abatement plan has been completed. The department may also verify plan completion by residual lead dust monitoring. Compliance with the maintenance standard shall be deemed equivalent to meeting the abatement plan requirements.

(i) Removal of children from the dwelling, school, or day-care facility shall not constitute abatement if the property continues to be used for a dwelling, school, or day-care facility. (Code 1981, § 31-41-14, enacted by Ga. L. 2000, p. 1260, § 1; Ga. L. 2008, p. 822, § 3/HB 1043; Ga. L. 2011, p. 705, § 6-6/HB 214.)

The 2011 amendment, effective July 1, 2011, substituted “department” for “division” throughout this Code section.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

31-41-15. Owner liability for units constructed prior to 1978.

Any owner of a residential housing unit constructed prior to 1978 who is sued by a current or former occupant seeking damages for injuries allegedly arising from exposure to lead-based paint or lead-contaminated dust shall not be deemed liable: (1) for any injuries sustained by that occupant after the owner first complied with the maintenance standard defined under paragraph (8) of Code Section 31-41-12, provided that the owner has repeated the steps provided for in the maintenance standard annually and obtained a certificate of compliance under Code Section 31-41-16 annually during such occupancy; or (2) if the owner is able to show that the unit was lead safe housing containing no lead-based paint hazards during the period when the injuries were sustained. Nothing contained in this article shall be construed or interpreted as imposing or creating any liability on or creating any cause of action against any owner or managing agent of a dwelling, dwelling unit, or residential housing unit arising from exposure to lead-based paint or lead-contaminated dust, regardless of when such dwelling, dwelling unit, or residential housing unit was constructed and regardless of whether the requirements of this article have been complied with or accomplished. (Code 1981, § 31-41-15, enacted by Ga. L. 2000, p. 1260, § 1.)

Code Commission notes. — Pursuant was inserted following “Code Section to Code Section 28-9-5, in 2000, a comma 31-41-12”.

RESEARCH REFERENCES

C.J.S. — 39A C.J.S., Health and Environment, §§ 51 et seq., 71. 52 C.J.S., Landlord and Tenant, § 419.

31-41-16. Certificate evidencing compliance; liability relief.

An owner of a unit who has complied with the maintenance standard may apply annually to the department for, and upon presentation of acceptable proof of compliance shall be provided by the department a certificate evidencing such compliance. The owner shall be entitled to the liability relief provided for in Code Section 31-41-15 upon obtaining such certificate or certificates. (Code 1981, § 31-41-16, enacted by Ga. L. 2000, p. 1260, § 1; Ga. L. 2011, p. 705, § 6-6/HB 214.)

The 2011 amendment, effective July 1, 2011, substituted “department” for “division” twice in the first sentence of this Code section.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

31-41-17. Advice regarding cleaning activities in homes occupied by children with elevated blood lead levels.

In any residential housing unit occupied by a child less than six years old who has an elevated blood lead level of ten micrograms per deciliter or greater, the department shall advise, in writing, the owner or managing agent and the child’s parents or legal guardian as to the importance of carrying out routine cleaning activities in the units they occupy, own, or manage. Such cleaning activities shall include:

(1) Wiping clean all window sills with a damp cloth or sponge at least weekly;

(2) Regularly washing all surfaces accessible to the child;

(3) In the case of a leased residential housing unit, identifying any deteriorated paint in the unit and notifying the owner or managing agent of such conditions within 72 hours of discovery; and

(4) Identifying and understanding potential lead poisoning hazards in the environment of each child under the age of six in the housing unit including vinyl miniblinds, playground equipment, soil, and painted surfaces and taking steps to prevent the child from ingesting lead, such as encouraging the child to wash his or her face and hands frequently and especially after playing outdoors. (Code 1981, § 31-41-17, enacted by Ga. L. 2000, p. 1260, § 1; Ga. L. 2011, p. 705, § 6-6/HB 214.)

The 2011 amendment, effective July 1, 2011, substituted “department” for “division” in the first sentence of this Code section.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

31-41-18. Application.

This article shall only apply to:

- (1) Owners of residential rental property; and
- (2) Landlords

that accept compensation for the use of residential property by another. (Code 1981, § 31-41-18, enacted by Ga. L. 2000, p. 1260, § 1; Ga. L. 2008, p. 822, § 3/HB 1043.)

31-41-19. Rules and regulations.

The Department of Public Health shall be authorized to promulgate all necessary regulations for the implementation and enforcement of this article. (Code 1981, § 31-41-19, enacted by Ga. L. 2000, p. 1260, § 1; Ga. L. 2011, p. 705, § 6-2/HB 214.)

The 2011 amendment, effective July 1, 2011, substituted “Department of Public Health” for “Division of Public Health” at the beginning of this Code section.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

CHAPTER 42

OSTEOPOROSIS PREVENTION AND TREATMENT
EDUCATION

Sec.

31-42-1. Short title.

31-42-2. Purposes.

Sec.

31-42-3. Strategies to promote and
maintain education program.

Law reviews. — For note on the 1995 enactment of this chapter, see 12 Ga. St. U.L. Rev. 234 (1995).

31-42-1. Short title.

This chapter shall be known and may be cited as the “Osteoporosis Prevention and Treatment Education Act.” (Code 1981, § 31-42-1, enacted by Ga. L. 1995, p. 841, § 2.)

Cross references. — Bone mass measurement coverage, T. 31, C. 15A.

31-42-2. Purposes.

The purposes of this chapter are, to the extent funds are available:

(1) To create a multigenerational, state-wide program to promote awareness and knowledge about osteoporosis, risk factors, prevention, detection, and treatment options;

(2) To facilitate understanding of osteoporosis with educational materials, information about research, services, and strategies for prevention and treatment;

(3) To utilize educational and training resources of organizations with expertise and knowledge of osteoporosis;

(4) To evaluate the quality and accessibility of osteoporosis services of community based services;

(5) To provide easy access to clear, complete, and accurate osteoporosis information and referral services;

(6) To educate and train service providers, health professionals, and physicians; and to heighten awareness about the prevention, detection, and treatment of osteoporosis among health and human service officials, health educators, and policy makers; and

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(7) To promote the development of support groups for osteoporosis patients and their families and caregivers. (Code 1981, § 31-42-2, enacted by Ga. L. 1995, p. 841, § 2.)

31-42-3. Strategies to promote and maintain education program.

The department shall establish strategies to promote and maintain an osteoporosis prevention and treatment education program in order to raise public awareness, educate consumers, and train health professionals, teachers, and human service providers, including:

(1) **PUBLIC AWARENESS.** The department shall develop strategies for raising public awareness of the causes and nature of osteoporosis, personal risk factors, value of prevention and early detection, and options for diagnosis and treatment;

(2) **CONSUMER EDUCATION.** The department shall develop strategies for educating consumers about risk factors, diet and exercise, diagnostic procedures and their indications for use, risks and benefits of drug therapies currently approved by the U.S. Food and Drug Administration, and the availability of services;

(3) **PROFESSIONAL EDUCATION.** The department may develop strategies for educating physicians and health professionals and training service providers on osteoporosis prevention, diagnosis, and treatment, including guidelines for detecting and treating in special populations, and medication options;

(4) **NEEDS ASSESSMENT.** The department may conduct a needs assessment to identify research being conducted; technical assistance and educational materials and programs nationwide; the level of awareness about osteoporosis; the needs of patients, families, and caregivers; the needs of health care providers, including managed care organizations; the services available to patients; existence of treatment programs; existence of rehabilitation services; and number and location of bone density testing equipment. To the extent that funds are specifically appropriated, the department shall develop and maintain a resource guide to include osteoporosis related services; and

(5) **TECHNICAL ASSISTANCE.** The department may replicate and use successful osteoporosis programs and contracts with and purchase materials or services from organizations with expertise and knowledge of osteoporosis. (Code 1981, § 31-42-3, enacted by Ga. L. 1995, p. 841, § 2.)

CHAPTER 43

COMMISSION ON MEN'S HEALTH

Sec.		Sec.	
31-43-1.	Definition.	31-43-7.	Terms of members; vacancies.
31-43-2.	Findings of General Assembly.	31-43-8.	Election of presiding officer; presiding officer's power of appointment.
31-43-3.	Creation of commission.	31-43-9.	Compensation.
31-43-4.	Members of commission.	31-43-10.	Meetings; implementation of policies.
31-43-5.	Appointments to commission.	31-43-11.	Annual written report.
31-43-6.	Lobbyists excluded as members; removal of members; validity of actions; notification when grounds for removal exists.	31-43-12.	Duties and responsibilities.
		31-43-13.	Solicitation of donations.

31-43-1. Definition.

As used in this chapter, the term "commission" means the Commission on Men's Health created in Code Section 31-43-3. (Code 1981, § 31-43-1, enacted by Ga. L. 2000, p. 126, § 1.)

31-43-2. Findings of General Assembly.

The General Assembly makes the following findings:

(1) There is a silent health crisis affecting the health and well-being of Georgia's men;

(2) This health crisis is of particular concern to men, but is also a concern for women, and especially to those who have fathers, husbands, sons, and brothers;

(3) Men's health is likewise a concern for employers who lose productive employees as well as pay the costs of medical care, and is a concern to state government and society which absorb the enormous costs of premature death and disability, including the costs of caring for dependents left behind;

(4) The life expectancy gap between men and women has steadily increased from one year in 1920 to seven years in 1990;

(5) Almost twice as many men than women die from heart disease, and 28.5 percent of all men die as a result of stroke;

(6) In 1995, blood pressure of black males was 356 percent higher than that of white males, and the death rate for stroke was 97 percent higher for black males than for white males;

(7) The incidence of stroke among men is 19 percent higher than for women;

(8) Significantly more men than women are diagnosed with AIDS each year;

(9) Fifty percent more men than women die of cancer;

(10) Although the incidence of depression is higher in women, the rate of life-threatening depression is higher in men, with men representing 80 percent of all suicides cases, and with men 43 times more likely to be admitted to psychiatric hospitals than women;

(11) Prostate cancer is the most frequently diagnosed cancer in the United States among men, accounting for 36 percent of all cancer cases;

(12) An estimated 180,000 men will be newly diagnosed with prostate cancer this year alone, of which 37,000 will die;

(13) Prostate cancer rates increase sharply with age, and more than 75 percent of such cases are diagnosed in men age 65 and older;

(14) The incidence of prostate cancer and the resulting mortality rate in African American men is twice that in white men;

(15) Studies show that men are at least 25 percent less likely than women to visit a doctor, and are significantly less likely to have regular physician check-ups and obtain preventive screening tests for serious diseases;

(16) Appropriate use of tests such as prostate specific antigen (PSA) exams and blood pressure, blood sugar, and cholesterol screens, in conjunction with clinical exams and self-testing, can result in the early detection of many problems and in increased survival rates;

(17) Educating men, their families, and health care providers about the importance of early detection of male health problems can result in reducing rates of mortality for male-specific diseases, as well as improve the health of Georgia's men and its overall economic well-being;

(18) Recent scientific studies have shown that regular medical exams, preventive screenings, regular exercise, and healthy eating habits can help save lives; and

(19) A Commission on Men's Health is needed to investigate these findings and take such further actions as may be needed to promote men's health in this state. (Code 1981, § 31-43-2, enacted by Ga. L. 2000, p. 126, § 1.)

31-43-3. Creation of commission.

There is created the Commission on Men's Health. The commission shall be assigned to the Department of Public Health for administrative

purposes only, as provided in Code Section 50-4-3, except that such department shall provide staff to the commission. (Code 1981, § 31-43-3, enacted by Ga. L. 2000, p. 126, § 1; Ga. L. 2011, p. 705, § 6-3/HB 214.)

The 2011 amendment, effective July 1, 2011, substituted “Department of Public Health” for “Department of Community Health” in the middle of the second sentence of this Code section.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

31-43-4. Members of commission.

The commission shall consist of 11 members: seven members appointed by the Governor; two members of the Senate appointed by the Senate Committee on Assignments, one of whom shall be the chairperson of the Senate Health and Human Services Committee or his or her designee; and two members of the House of Representatives appointed by the Speaker of the House, one of whom shall be the chairperson of the House Committee on Health and Human Services or his or her designee. The Governor may also appoint an honorary chairperson to serve as a member of the commission. (Code 1981, § 31-43-4, enacted by Ga. L. 2000, p. 126, § 1; Ga. L. 2005, p. 48, § 3/HB 309.)

31-43-5. Appointments to commission.

Appointments to the commission shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees. The members of the commission appointed by the Governor shall be representative of major public and private agencies and organizations and shall be experienced in or have demonstrated particular interest in men’s health issues. (Code 1981, § 31-43-5, enacted by Ga. L. 2000, p. 126, § 1; Ga. L. 2001, p. 4, § 31.)

31-43-6. Lobbyists excluded as members; removal of members; validity of actions; notification when grounds for removal exists.

(a) A person may not serve as a member of the commission if the person is required to register as a lobbyist because of the person’s activities for compensation on behalf of a profession related to the operation of the commission.

(b) The elected official who appoints members to the commission may remove any member appointed by such official who:

- (1) Violates a prohibition established by this chapter;

(2) Cannot because of illness or disability discharge the member's duties for a substantial part of the term for which the member is appointed; or

(3) Is absent from more than half of the regularly scheduled commission meetings that the member is eligible to attend during a calendar year unless the absence is excused by majority vote of the commission.

(c) The validity of an action of the commission is not affected by the fact that it is taken when a ground for removal of a commission member exists.

(d) If a member of the commission has knowledge that a potential ground for removal exists, the member shall notify the presiding officer of the commission of the potential ground. The presiding officer shall then notify the elected official who appointed such member that a potential ground for removal exists. (Code 1981, § 31-43-6, enacted by Ga. L. 2000, p. 126, § 1.)

31-43-7. Terms of members; vacancies.

(a) The initial members of the commission who are members of the General Assembly shall serve for initial terms of office which expire December 31, 2000. Thereafter, those members of the commission who are members of the General Assembly shall serve for terms of office of two years each. Members of the commission who are not members of the General Assembly shall serve for terms of office of three years each. Members of the commission shall serve for the terms of office specified in this Code section and until their respective successors are appointed and qualified. Members of the commission may be reappointed to the commission upon the expiration of their terms of office if they otherwise continue to meet the qualifications for such office.

(b) If a vacancy occurs in the membership of the commission, the elected official who appointed the member to the position which became vacant shall appoint a successor for the remainder of the unexpired term and until a successor is appointed and qualified. (Code 1981, § 31-43-7, enacted by Ga. L. 2000, p. 126, § 1.)

31-43-8. Election of presiding officer; presiding officer's power of appointment.

(a) The commission annually shall elect one of its members as presiding officer.

(b) The presiding officer of the commission may appoint subcommittees for any purpose consistent with the duties of the commission under

this chapter. (Code 1981, § 31-43-8, enacted by Ga. L. 2000, p. 126, § 1.)

31-43-9. Compensation.

A member of the commission is not entitled to compensation or expenses, except that any member of the commission who is a member of the General Assembly shall receive the same expenses and allowances for each day of service upon the commission as is authorized for members of interim legislative study committees of the General Assembly. (Code 1981, § 31-43-9, enacted by Ga. L. 2000, p. 126, § 1.)

31-43-10. Meetings; implementation of policies.

(a) The commission may meet at the times and places that the commission designates.

(b) The commission shall develop and implement policies that provide the public with a reasonable opportunity to appear before the commission and to speak on any issue under the jurisdiction of the commission. (Code 1981, § 31-43-10, enacted by Ga. L. 2000, p. 126, § 1.)

31-43-11. Annual written report.

The commission shall prepare annually a complete and detailed written report accounting for all funds received and disbursed by the commission during the preceding fiscal year. (Code 1981, § 31-43-11, enacted by Ga. L. 2000, p. 126, § 1.)

31-43-12. Duties and responsibilities.

The commission shall:

- (1) Adopt rules as necessary for its own procedures;
- (2) Develop strategies, public policy recommendations, and programs, including community outreach and public-private partnerships, that are designed to educate Georgia's men on the benefits of regular physician check-ups, early detection and preventive screening tests, and healthy lifestyle practices;
- (3) Focus on improving health outcomes of men in specific disease areas, including but not necessarily limited to prostate and testicular cancer; cardiovascular disease including high blood pressure, stroke, and heart attacks; depression and suicide; and diabetes;
- (4) Monitor state and federal policy and legislation that may affect the areas of men's health;

(5) Recommend assistance, services, and policy changes that will further the goals of the commission; and

(6) Submit a report of its findings and recommendations under this chapter to the Governor, the President of the Senate, and the Speaker of the House of Representatives not later than October 1 of each year. (Code 1981, § 31-43-12, enacted by Ga. L. 2000, p. 126, § 1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2000, in paragraph (3), a comma was inserted following “disease areas” and “stroke” and semico-

lons were substituted for commas following “testicular cancer”, “heart attacks”, and “depression and suicide”.

31-43-13. Solicitation of donations.

The commission may solicit and accept donations, gifts, grants, property, or matching funds from a public or private source for the use of the commission in performing its functions under this chapter. (Code 1981, § 31-43-13, enacted by Ga. L. 2000, p. 126, § 1.)

CHAPTER 44

RENAL DISEASE FACILITIES

Sec.		Sec.	
31-44-1.	Definitions.	31-44-8.	Qualifications of employees.
31-44-2.	Fees.	31-44-9.	Minimum standards for curricula, instructors, and training.
31-44-3.	Adoption of rules; council established; terms of councilmembers.	31-44-10.	Inspections.
31-44-4.	License required.	31-44-11.	Authority of department to deal with violations of this chapter or rules adopted thereunder.
31-44-5.	Exceptions to licensing requirement.	31-44-12.	Deposit of collected penalties.
31-44-6.	Application for license; fee; evidence of qualified staff; temporary provisional license; issuance of license; renewability of license.	31-44-13.	Temporary management of facilities.
31-44-7.	Minimum standards of rules.	31-44-14.	Action to enjoin operation of facility.
		31-44-15.	Fee of temporary manager.

Code Commission notes. — Ga. L. 2000, p. 126, § 1, Ga. L. 2000, p. 526, § 1, and Ga. L. 2000, p. 549, § 3 all enacted a Chapter 43 of Title 31. Pursuant to Code Section 28-9-5, the chapter enacted by Ga. L. 2000, p. 526, § 1 has been redesignated as Chapter 44 and the chapter enacted by Ga. L. 2000, p. 549, § 3 has been redesignated as Chapter 45.

Editor's notes. — Ga. L. 2005, p. 1194, § 1/SB 48, not codified by the General Assembly, provides that: "It is the general intent of this Act to eliminate the future 'sunset' of certain provisions relating to renal dialysis facilities. The following provisions of the Official Code of Georgia Annotated which were in effect and applicable on January 1, 2005, shall remain in effect and applicable until and unless changed by future Act of the General Assembly:

"(1) Code Section 31-44-1, relating to definitions;

"(2) Code Section 31-44-2, relating to fees;

"(3) Code Section 31-44-3, relating to adoption of rules and the establishment of the Renal Dialysis Advisory Council;

"(4) Code Section 31-44-4, relating to license requirement;

"(5) Code Section 31-44-5, relating to exceptions to licensing requirements;

"(6) Code Section 31-44-6, relating to application for license; fee; evidence of qualified staff; temporary provisional license; issuance of license; and renewability of license;

"(7) Code Section 31-44-7, relating to minimum standards of rules;

"(8) Code Section 31-44-8, relating to qualifications of employees;

"(9) Code Section 31-44-9, relating to minimum standards for curricula, instructors, and training;

"(10) Code Section 31-44-10, relating to inspections;

"(11) Code Section 31-44-11, relating to authority of department to deal with violations of Chapter 44 of Title 31 or rules adopted thereunder;

"(12) Code Section 31-44-12, relating to deposit of collected penalties;

"(13) Code Section 31-44-13, relating to temporary management of facilities;

"(14) Code Section 31-44-14, relating to action to enjoin operation of facility; and

"(15) Code Section 31-44-15, relating to fee of temporary manager.

"(b) The following provision of law is repealed:

"Section 4 of an Act amending Title 31 of the Official Code of Georgia Annotated, relating to health, approved April 20, 2000 (Ga. L. 2000, p. 526), which now repealed

section would have provided for a future repeal or sunset of certain provisions relating to renal dialysis facilities.”

Administrative rules and regulations. — End stage renal disease facili-

ties, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Human Resources, Office of Regulatory Services, Chapter 290-9-9.

31-44-1. Definitions.

As used in this chapter, the term:

- (1) “Board” means the Board of Community Health.
- (2) “Department” means the Department of Community Health.
- (3) “Dialysis” means a process by which dissolved substances are removed from a patient’s body by diffusion, osmosis, and convection (ultrafiltration) from one fluid compartment to another across a semipermeable membrane.
- (4) “Dialysis technician” means an individual who is not a registered nurse or physician and who provides dialysis care under the supervision of a registered nurse or physician.
- (5) “End stage renal disease” means that stage of renal impairment that appears irreversible and permanent and that requires a regular course of dialysis or kidney transplantation to maintain life.
- (6) “End stage renal disease facility” means a facility that provides dialysis treatment, home dialysis training, support services, or any combination thereof to individuals with end stage renal disease.
- (7) “Physician” means an individual who is licensed to practice medicine under Article 2 of Chapter 34 of Title 34.
- (8) “Reuse technician” means an individual who is not a registered nurse or licensed physician who performs the procedures necessary to clean and properly prepare kidney dialyzers for use for multiple treatments. (Code 1981, § 31-44-1, enacted by Ga. L. 2000, p. 526, § 1; Ga. L. 2011, p. 705, § 4-18/HB 214.)

The 2011 amendment, effective July 1, 2011, added paragraphs (1) and (2); and redesignated former paragraphs (1) through (6) as present paragraphs (3) through (8), respectively.

Code Commission notes. — Ga. L. 2000, p. 126, § 1, Ga. L. 2000, p. 526, § 1, and Ga. L. 2000, p. 549, § 3 all enacted a Chapter 43 of Title 31. Pursuant to Code Section 28-9-5, in 2000, the chapter enacted by Ga. L. 2000, p. 526, § 1 has been redesignated as Chapter 44 of Title 31 and the Code sections therein redesignated

accordingly. The chapter enacted by Ga. L. 2000, p. 549, § 3 has been redesignated as Chapter 45 of Title 31 and the Code sections therein redesignated accordingly.

Pursuant to Code Section 28-9-5, in 2000, “semipermeable” was substituted for “semi-permeable” in paragraph (1) (now paragraph (3)).

Editor’s notes. — For information as to the elimination of a certain future repeal or “sunset” of this Code section, see the Editor’s note at the beginning of this chapter.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

31-44-2. Fees.

The board shall set fees imposed by this chapter in amounts reasonable and necessary to defray the costs of administering this chapter with due consideration to the amount of funds received from the federal government by the department for performance of medicare certification surveys of dialysis clinics. In setting fees under this Code section, the board shall consider setting a range of license and renewal fees based upon the number of dialysis stations at each facility, but in no event shall the annual license fee exceed \$1,500.00 per end stage renal disease facility. (Code 1981, § 31-44-2, enacted by Ga. L. 2000, p. 526, § 1.)

Code Commission notes. — Ga. L. 2000, p. 126, § 1, Ga. L. 2000, p. 526, § 1, and Ga. L. 2000, p. 549, § 3 all enacted a Chapter 43 of Title 31. Pursuant to Code Section 28-9-5, in 2000, the chapter enacted by Ga. L. 2000, p. 526, § 1 has been redesignated as Chapter 44 of Title 31 and the Code sections therein redesignated accordingly. The chapter enacted by Ga. L.

2000, p. 549, § 3 has been redesignated as Chapter 45 of Title 31 and the Code sections therein redesignated accordingly.

Editor's notes. — For information as to the elimination of a certain future repeal or "sunset" of this Code section, see the Editor's note at the beginning of this chapter.

31-44-3. Adoption of rules; council established; terms of councilmembers.

(a) The board shall adopt rules to implement this chapter, including but not limited to requirements for the issuance, renewal, denial, suspension, and revocation of a license to operate an end stage renal disease facility. The rules adopted by the board pursuant to this Code section shall not conflict with any federal law or regulation applicable to end stage renal disease facilities or personnel thereof and shall set forth minimum standards for the health, safety, and protection of the patient being served.

(b) The department shall establish a Renal Dialysis Advisory Council to advise the department regarding licensing and inspection of end stage renal disease facilities. The council shall be composed of a minimum of 13 persons appointed by the board: one member recommended by the Dogwood Chapter of the American Nephrology Nurses Association; one member recommended by the Georgia Association of Kidney Patients; two physicians specializing in nephrology recommended by the Georgia Renal Physicians Association; one member recommended by the National Kidney Foundation of Georgia; two administrators of facilities certified as outpatient dialysis facilities in

Georgia; three members of the general public, two of whom shall be dialysis patients or family members of dialysis patients; one member representing technicians working in renal dialysis facilities; one member representing social workers working in renal dialysis facilities; and one member representing dietitians working in renal dialysis facilities.

(c) Members of the council shall serve four-year terms and until their successors are appointed and qualified. No member of the council shall serve more than two consecutive terms. The council shall meet as frequently as the department considers necessary, but not less than twice each year. The council shall be consulted and have the opportunity to evaluate all rules promulgated by the department under this chapter applicable to end stage renal disease facilities prior to their adoption. Members shall serve without compensation. (Code 1981, § 31-44-3, enacted by Ga. L. 2000, p. 526, § 1; Ga. L. 2005, p. 1194, § 2/SB 48.)

Code Commission notes. — Ga. L. 2000, p. 126, § 1, Ga. L. 2000, p. 526, § 1, and Ga. L. 2000, p. 549, § 3 all enacted a Chapter 43 of Title 31. Pursuant to Code Section 28-9-5, in 2000, the chapter enacted by Ga. L. 2000, p. 526, § 1 has been redesignated as Chapter 44 of Title 31 and the Code sections therein redesignated accordingly. The chapter enacted by Ga. L.

2000, p. 549, § 3 has been redesignated as Chapter 45 of Title 31 and the Code sections therein redesignated accordingly.

Editor's notes. — For information as to the elimination of a certain future repeal or "sunset" of this Code section, see the Editor's note at the beginning of this chapter.

31-44-4. License required.

Except as provided by Code Section 31-44-5, no person, business entity, corporation, or association may operate an end stage renal disease facility without a license issued under this chapter. Any end stage renal disease facility which is in operation when this chapter becomes effective for all purposes, and which has been certified for participation in the federal medicare program shall be granted a license by the department upon payment of the applicable license fee. A license shall be effective for a 12 month period following the date of issue and shall expire one year following such date; provided, however, a facility that has not been inspected during the year may continue to operate under its existing license until an inspection is made. (Code 1981, § 31-44-4, enacted by Ga. L. 2000, p. 526, § 1.)

Code Commission notes. — Ga. L. 2000, p. 126, § 1, Ga. L. 2000, p. 526, § 1, and Ga. L. 2000, p. 549, § 3 all enacted a Chapter 43 of Title 31. Pursuant to Code Section 28-9-5, in 2000, the chapter enacted by Ga. L. 2000, p. 526, § 1 has been redesignated as Chapter 44 of Title 31 and the Code sections therein redesignated

accordingly. The chapter enacted by Ga. L. 2000, p. 549, § 3 has been redesignated as Chapter 45 of Title 31 and the Code sections therein redesignated accordingly.

Pursuant to Code Section 28-9-5, in 2000, "31-44-5" was substituted for "31-43-5" in the first sentence of this Code section.

Editor's notes. — For information as to the elimination of a certain future repeal or “sunset” of this Code section, see the Editor's note at the beginning of this chapter.

31-44-5. Exceptions to licensing requirement.

The following facilities are not required to be licensed under this chapter:

- (1) A hospital permitted under Chapter 7 of this title that provides dialysis to individuals receiving services from the hospital;
- (2) The office of a physician unless the office is used primarily as an end stage renal disease facility; or
- (3) Federal or state agency facilities. (Code 1981, § 31-44-5, enacted by Ga. L. 2000, p. 526, § 1.)

Code Commission notes. — Ga. L. 2000, p. 126, § 1, Ga. L. 2000, p. 526, § 1, and Ga. L. 2000, p. 549, § 3 all enacted a Chapter 43 of Title 31. Pursuant to Code Section 28-9-5, in 2000, the chapter enacted by Ga. L. 2000, p. 526, § 1 has been redesignated as Chapter 44 of Title 31 and the Code sections therein redesignated accordingly. The chapter enacted by Ga. L. 2000, p. 549, § 3 has been redesignated as Chapter 45 of Title 31 and the Code sections therein redesignated accordingly.

Editor's notes. — For information as to the elimination of a certain future repeal or “sunset” of this Code section, see the Editor's note at the beginning of this chapter.

31-44-6. Application for license; fee; evidence of qualified staff; temporary provisional license; issuance of license; renewability of license.

(a) An applicant for a license under this chapter must submit an application to the department on a form prescribed by the department.

(b) Each application must be accompanied by a nonrefundable \$100.00 application fee.

(c) Each application must contain evidence that there are sufficient qualified staff at the facility.

(d) The department may grant a temporary provisional license to an applicant.

(e) The department shall issue a license if it finds the applicant meets the requirements of this chapter and the rules adopted under this chapter.

(f) The license is renewable periodically after submission of:

- (1) The renewal application and fee; and
- (2) Satisfactory compliance with the rules adopted under this chapter. (Code 1981, § 31-44-6, enacted by Ga. L. 2000, p. 526, § 1.)

Code Commission notes. — Ga. L. 2000, p. 126, § 1, Ga. L. 2000, p. 526, § 1, and Ga. L. 2000, p. 549, § 3 all enacted a Chapter 43 of Title 31. Pursuant to Code Section 28-9-5, in 2000, the chapter enacted by Ga. L. 2000, p. 526, § 1 has been redesignated as Chapter 44 of Title 31 and the Code sections therein redesignated accordingly. The chapter enacted by Ga. L.

2000, p. 549, § 3 has been redesignated as Chapter 45 of Title 31 and the Code sections therein redesignated accordingly.

Editor's notes. — For information as to the elimination of a certain future repeal or "sunset" of this Code section, see the Editor's note at the beginning of this chapter.

31-44-7. Minimum standards of rules.

The rules adopted under Code Section 31-44-3 must contain minimum standards to protect the health and safety of a patient of an end stage renal disease facility. (Code 1981, § 31-44-7, enacted by Ga. L. 2000, p. 526, § 1.)

Code Commission notes. — Ga. L. 2000, p. 126, § 1, Ga. L. 2000, p. 526, § 1, and Ga. L. 2000, p. 549, § 3 all enacted a Chapter 43 of Title 31. Pursuant to Code Section 28-9-5, in 2000, the chapter enacted by Ga. L. 2000, p. 526, § 1 has been redesignated as Chapter 44 of Title 31 and the Code sections therein redesignated accordingly. The chapter enacted by Ga. L. 2000, p. 549, § 3 has been redesignated as

Chapter 45 of Title 31 and the Code sections therein redesignated accordingly.

Pursuant to Code Section 28-9-5, in 2000, "31-44-3" was substituted for "31-43-3" in this Code section.

Editor's notes. — For information as to the elimination of a certain future repeal or "sunset" of this Code section, see the Editor's note at the beginning of this chapter.

31-44-8. Qualifications of employees.

An end stage renal disease facility may not employ or have working in that facility as a dialysis or reuse technician anyone other than an individual trained and competent pursuant to the rules promulgated under this chapter. (Code 1981, § 31-44-8, enacted by Ga. L. 2000, p. 526, § 1.)

Code Commission notes. — Ga. L. 2000, p. 126, § 1, Ga. L. 2000, p. 526, § 1, and Ga. L. 2000, p. 549, § 3 all enacted a Chapter 43 of Title 31. Pursuant to Code Section 28-9-5, in 2000, the chapter enacted by Ga. L. 2000, p. 526, § 1 has been redesignated as Chapter 44 of Title 31 and the Code sections therein redesignated accordingly. The chapter enacted by Ga. L.

2000, p. 549, § 3 has been redesignated as Chapter 45 of Title 31 and the Code sections therein redesignated accordingly.

Editor's notes. — For information as to the elimination of a certain future repeal or "sunset" of this Code section, see the Editor's note at the beginning of this chapter.

31-44-9. Minimum standards for curricula, instructors, and training.

The rules adopted by the board under Code Section 31-44-3 shall establish:

- (1) Minimum standards for the curricula and instructors used to train individuals to act as dialysis or reuse technicians;
- (2) Minimum standards for the determination of the competency of individuals who have been trained as dialysis or reuse technicians;
- (3) Minimum requirements for documentation that an individual has been trained and determined to be competent as a dialysis or reuse technician and the acceptance of that documentation by another end stage renal disease facility that may later employ the individual; and
- (4) The acts and practices that are allowed or prohibited for dialysis or reuse technicians. (Code 1981, § 31-44-9, enacted by Ga. L. 2000, p. 526, § 1.)

Code Commission notes. — Ga. L. 2000, p. 126, § 1, Ga. L. 2000, p. 526, § 1, and Ga. L. 2000, p. 549, § 3 all enacted a Chapter 43 of Title 31. Pursuant to Code Section 28-9-5, in 2000, the chapter enacted by Ga. L. 2000, p. 526, § 1 has been redesignated as Chapter 44 of Title 31 and the Code sections therein redesignated accordingly. The chapter enacted by Ga. L. 2000, p. 549, § 3 has been redesignated as

Chapter 45 of Title 31 and the Code sections therein redesignated accordingly.

Pursuant to Code Section 28-9-5, in 2000, “31-44-3” was substituted for “31-43-3” in the introductory language.

Editor’s notes. — For information as to the elimination of a certain future repeal or “sunset” of this Code section, see the Editor’s note at the beginning of this chapter.

31-44-10. Inspections.

(a) The department shall conduct periodic inspections of each end stage renal disease facility to verify compliance with this chapter and rules adopted under this chapter.

(b) An inspection conducted under this Code section shall be unannounced, except for initial inspections, location changes, or expansions. (Code 1981, § 31-44-10, enacted by Ga. L. 2000, p. 526, § 1.)

Code Commission notes. — Ga. L. 2000, p. 126, § 1, Ga. L. 2000, p. 526, § 1, and Ga. L. 2000, p. 549, § 3 all enacted a Chapter 43 of Title 31. Pursuant to Code Section 28-9-5, in 2000, the chapter enacted by Ga. L. 2000, p. 526, § 1 has been redesignated as Chapter 44 of Title 31 and the Code sections therein redesignated accordingly. The chapter enacted by Ga. L.

2000, p. 549 § 3 has been redesignated as Chapter 45 of Title 31 and the Code sections therein redesignated accordingly.

Editor’s notes. — For information as to the elimination of a certain future repeal or “sunset” of this Code section, see the Editor’s note at the beginning of this chapter.

31-44-11. Authority of department to deal with violations of this chapter or rules adopted thereunder.

(a) The department is authorized to issue, deny, suspend, or revoke a license issued under this chapter for a violation of this chapter or a

rule adopted under this chapter, or take other disciplinary actions against licensees as provided in Code Section 31-2-8.

(b) The denial, suspension, or revocation of a license by the department shall be a contested case for purposes of Chapter 13 of Title 50, the “Georgia Administrative Procedure Act.” (Code 1981, § 31-44-11, enacted by Ga. L. 2000, p. 526, § 1; Ga. L. 2009, p. 453, § 1-9/HB 228; Ga. L. 2011, p. 705, § 4-7/HB 214.)

The 2011 amendment, effective July 1, 2011, substituted “Code Section 31-2-8” for “Code Section 31-2-11” at the end of subsection (a).

Code Commission notes. — Ga. L. 2000, p. 126, § 1, Ga. L. 2000, p. 526, § 1, and Ga. L. 2000, p. 549, § 3 all enacted a Chapter 43 of Title 31. Pursuant to Code Section 28-9-5, in 2000, the chapter enacted by Ga. L. 2000, p. 526, § 1 has been redesignated as Chapter 44 of Title 31 and the Code sections therein redesignated

accordingly. The chapter enacted by Ga. L. 2000, p. 549, § 3 has been redesignated as Chapter 45 of Title 31 and the Code sections therein redesignated accordingly.

Editor’s notes. — For information as to the elimination of a certain future repeal or “sunset” of this Code section, see the Editor’s note at the beginning of this chapter.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

31-44-12. Deposit of collected penalties.

A civil or administrative penalty collected under this chapter shall be deposited in the state treasury to the general fund. (Code 1981, § 31-44-12, enacted by Ga. L. 2000, p. 526, § 1.)

Code Commission notes. — Ga. L. 2000, p. 126, § 1, Ga. L. 2000, p. 526, § 1, and Ga. L. 2000, p. 549, § 3 all enacted a Chapter 43 of Title 31. Pursuant to Code Section 28-9-5, in 2000, the chapter enacted by Ga. L. 2000, p. 526, § 1 has been redesignated as Chapter 44 of Title 31 and the Code sections therein redesignated accordingly. The chapter enacted by Ga. L.

2000, p. 549, § 3 has been redesignated as Chapter 45 of Title 31 and the Code sections therein redesignated accordingly.

Editor’s notes. — For information as to the elimination of a certain future repeal or “sunset” of this Code section, see the Editor’s note at the beginning of this chapter.

31-44-13. Temporary management of facilities.

(a) A person holding a controlling interest in an end stage renal disease facility may, at any time, request the department to assume the management of the facility through the appointment of a temporary manager under this chapter.

(b) After receiving the request, the department may enter into an agreement providing for the appointment of a temporary manager to manage the facility under conditions considered appropriate by both parties if the department considers the appointment desirable.

(c) An agreement under this Code section must:

(1) Specify all terms and conditions of the temporary manager's appointment and authority; and

(2) Preserve all rights granted by law of the individuals served by the facility.

(d) The primary duty of the temporary manager is to ensure that adequate and safe services are provided to patients until temporary management ceases.

(e) The appointment terminates at the time specified by the agreement. (Code 1981, § 31-44-13, enacted by Ga. L. 2000, p. 526, § 1.)

Code Commission notes. — Ga. L. 2000, p. 126, § 1, Ga. L. 2000, p. 526, § 1, and Ga. L. 2000, p. 549, § 3 all enacted a Chapter 43 of Title 31. Pursuant to Code Section 28-9-5, in 2000, the chapter enacted by Ga. L. 2000, p. 526, § 1 has been redesignated as Chapter 44 of Title 31 and the Code sections therein redesignated accordingly. The chapter enacted by Ga. L. 2000, p. 549, § 3 has been redesignated as

Chapter 45 of Title 31 and the Code sections therein redesignated accordingly.

Pursuant to Code Section 28-9-5, in 2000, "Code" was inserted in the introductory language of subsection (c).

Editor's notes. — For information as to the elimination of a certain future repeal or "sunset" of this Code section, see the Editor's note at the beginning of this chapter.

31-44-14. Action to enjoin operation of facility.

The department may request that the Attorney General bring an action to enjoin either the continued operation of the facility or the closing of the facility in the superior court of the county in which an end stage renal disease facility is located in the name of and on behalf of the state or for the appointment of a temporary manager to manage that end stage renal disease facility if:

(1) The facility is operating without a license;

(2) The department has denied, suspended, or revoked the facility's license, but the facility continues to operate;

(3) License denial, suspension, or revocation proceedings against the facility are pending and the department determines that an imminent or reasonably foreseeable threat to the health and safety of a patient of the facility exists;

(4) The department determines that an emergency exists that presents an immediate threat to the health and safety of a patient of the facility; or

(5) The facility is closing and arrangements for the care of patients by other licensed facilities have not been made before closure. (Code 1981, § 31-44-14, enacted by Ga. L. 2000, p. 526, § 1.)

Code Commission notes. — Ga. L. 2000, p. 126, § 1, Ga. L. 2000, p. 526, § 1, and Ga. L. 2000, p. 549, § 3 all enacted a Chapter 43 of Title 31. Pursuant to Code Section 28-9-5, in 2000, the chapter enacted by Ga. L. 2000, p. 526, § 1 has been redesignated as Chapter 44 of Title 31 and the Code sections therein redesignated accordingly. The chapter enacted by Ga. L.

2000, p. 549, § 3 has been redesignated as Chapter 45 of Title 31 and the Code sections therein redesignated accordingly.

Editor's notes. — For information as to the elimination of a certain future repeal or "sunset" of this Code section, see the Editor's note at the beginning of this chapter.

31-44-15. Fee of temporary manager.

(a) A temporary manager appointed under Code Section 31-44-13 or 31-44-14 is entitled to a reasonable fee as determined by the court. The fee shall be paid by the facility.

(b) A temporary manager appointed under Code Section 31-44-13 may petition the court to order the release to such manager of any payment owed such manager for care and services provided to patients of the facility if the payment has been withheld.

(c) Withheld payments that may be released under subsection (b) of this Code section may include payments withheld by a governmental agency or other entity before or during the appointment of the temporary manager, including:

(1) Medicaid, medicare, or insurance payments; or

(2) Payments from another third party. (Code 1981, § 31-44-15, enacted by Ga. L. 2000, p. 526, § 1.)

Code Commission notes. — Ga. L. 2000, p. 126, § 1, Ga. L. 2000, p. 526, § 1, and Ga. L. 2000, p. 549, § 3 all enacted a Chapter 43 of Title 31. Pursuant to Code Section 28-9-5, in 2000, the chapter enacted by Ga. L. 2000, p. 526, § 1 has been redesignated as Chapter 44 of Title 31 and the Code sections therein redesignated accordingly. The chapter enacted by Ga. L. 2000, p. 549, § 3 has been redesignated as Chapter 45 of Title 31 and the Code sections therein redesignated accordingly.

Pursuant to Code Section 28-9-5, in 2000, "31-44-13 or 31-44-14" was substituted for "31-43-13 or 31-43-14" in subsection (a) and "31-44-13" was substituted for "31-43-13" in subsection (b).

Editor's notes. — For information as to the elimination of a certain future repeal or "sunset" of this Code section, see the Editor's note at the beginning of this chapter.

CHAPTER 45

PUBLIC SWIMMING POOLS

Sec.		Sec.	
31-45-1.	Short title.	31-45-8.	Inspections by the county board of health.
31-45-2.	Purpose.	31-45-9.	Suspension or revocation of permit.
31-45-3.	Definitions.	31-45-10.	Rules and regulations.
31-45-4.	Issuance of permits; terms of expiration.	31-45-11.	Enforcement of rules and regulations.
31-45-5.	Operation permit required for each public swimming pool.	31-45-12.	Inspection of unregulated pools.
31-45-6.	Construction of public swimming pools.	31-45-13.	Applicability of chapter.
31-45-7.	Notification for inspection.		

Code Commission notes. — Ga. L. 2000, p. 1269, § 1, Ga. L. 2000, p. 526, § 1, and Ga. L. 2000, p. 549, § 3 all enacted a Chapter 43 of Title 31. Pursuant to Code Section 28-9-5, in 2000, the chapter enacted by Ga. L. 2000, p. 526, § 1 has been redesignated as Chapter 44 of Title 31 and the Code sections therein redesignated accordingly. The chapter enacted by Ga. L. 2000, p. 549, § 3 has been redesignated as Chapter 45 of Title 31 and the

Code sections therein redesignated accordingly.

Administrative rules and regulations. — Swimming pools, spas, and recreational water parks, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Human Resources (now the Department of Community Health for these purposes), Public Health, Chapter 290-5-57.

RESEARCH REFERENCES

Am. Jur. 2d. — 62A Am. Jur. 2d, Premises Liability, § 627 et seq.

Am. Jur. Proof of Facts. — Negligent Operation of Public Swimming Pool, 34 POF2d 63.

C.J.S. — 39A C.J.S., Health and Environment, § 78 et seq. 72A C.J.S., Products Liability, § 154.

31-45-1. Short title.

This chapter shall be known and may be cited as “Michelle’s Law.” (Code 1981, § 31-45-1, enacted by Ga. L. 2000, p. 549, § 3.)

Code Commission notes. — Ga. L. 2000, p. 126, § 1, Ga. L. 2000, p. 526, § 1, and Ga. L. 2000, p. 549, § 3 all enacted a Chapter 43 of Title 31. Pursuant to Code Section 28-9-5, in 2000, the chapter enacted by Ga. L. 2000, p. 526, § 1 has been

redesignated as Chapter 44 of Title 31 and the Code sections therein redesignated accordingly. The chapter enacted by Ga. L. 2000, p. 549, § 3 has been redesignated as Chapter 45 of Title 31 and the Code sections therein redesignated accordingly.

31-45-2. Purpose.

The purpose of this chapter is to protect the public health and safety through the proper design, operation, and maintenance of public swimming pools. (Code 1981, § 31-45-2, enacted by Ga. L. 2000, p. 549, § 3.)

Code Commission notes. — Ga. L. 2000, p. 126, § 1, Ga. L. 2000, p. 526, § 1, and Ga. L. 2000, p. 549, § 3 all enacted a Chapter 43 of Title 31. Pursuant to Code Section 28-9-5, in 2000, the chapter enacted by Ga. L. 2000, p. 526, § 1 has been

redesignated as Chapter 44 of Title 31 and the Code sections therein redesignated accordingly. The chapter enacted by Ga. L. 2000, p. 549, § 3 has been redesignated as Chapter 45 of Title 31 and the Code sections therein redesignated accordingly.

31-45-3. Definitions.

As used in this chapter, the term “public swimming pool,” “swimming pool,” or “pool” means any structure, chamber, or tank containing an artificial body of water used by the public for swimming, diving, wading, recreation, or therapy, together with buildings, appurtenances, and equipment used in connection with the body of water, regardless of whether a fee is charged for its use. The term includes municipal, school, hotel, or motel pools and any pool to which access is granted in exchange for payment of a daily fee. This chapter shall not apply to a private pool or hot tub serving a single-family dwelling and used only by the residents of the dwelling and their guests. This chapter also shall not apply to apartment complex pools, country club pools, subdivision pools which are open only to residents of the subdivision and their guests, therapeutic pools used in physical therapy programs operated by medical facilities licensed by the department or operated by a licensed physical therapist, therapeutic chambers drained, cleaned, and refilled after each individual use, or to religious ritual baths used solely for religious purposes. (Code 1981, § 31-45-3, enacted by Ga. L. 2000, p. 549, § 3.)

Code Commission notes. — Ga. L. 2000, p. 126, § 1, Ga. L. 2000, p. 526, § 1, and Ga. L. 2000, p. 549, § 3 all enacted a Chapter 43 of Title 31. Pursuant to Code Section 28-9-5, in 2000, the chapter enacted by Ga. L. 2000, p. 526, § 1 has been redesignated as Chapter 44 of Title 31 and the Code sections therein redesignated accordingly. The chapter enacted by Ga. L. 2000, p. 549, § 3 has been redesignated as Chapter 45 of Title 31 and the Code sections therein redesignated accordingly.

Pursuant to Code Section 28-9-5, in 2000, “single-family dwelling” was substituted for “single family dwelling” in the third sentence, and, in the fourth sentence, a comma was inserted following “licensed physical therapist” and following “each individual use”, “nor to” was deleted preceding “therapeutic chambers drained” and “or to religious” was substituted for “nor to religious”.

31-45-4. Issuance of permits; terms of expiration.

(a) On or after December 31, 2000, a permit shall be obtained from the county board of health in the county in which a public swimming pool is located prior to construction or continued operation of a public swimming pool. When the ownership of a public swimming pool changes or if the pool is leased by the owner, it shall be the responsibility of the new owner or lessee to secure a permit issued in his or her name.

(b) Unless suspended or revoked, a swimming pool operation permit shall be valid for the period of operation specified in the application, but in no event shall it be valid for more than 12 months. (Code 1981, § 31-45-4, enacted by Ga. L. 2000, p. 549, § 3.)

Code Commission notes. — Ga. L. 2000, p. 126, § 1, Ga. L. 2000, p. 526, § 1, and Ga. L. 2000, p. 549, § 3 all enacted a Chapter 43 of Title 31. Pursuant to Code Section 28-9-5, in 2000, the chapter enacted by Ga. L. 2000, p. 526, § 1 has been redesignated as Chapter 44 of Title 31 and the Code sections therein redesignated accordingly. The chapter enacted by Ga. L. 2000, p. 549, § 3 has been redesignated as Chapter 45 of Title 31 and the Code sections therein redesignated accordingly.

31-45-5. Operation permit required for each public swimming pool.

A separate application for an operation permit must be submitted for each public swimming pool. The owner or operator shall apply annually to the county board of health for an operator's permit. A form must be obtained from the county board of health to provide:

- (1) The owner's name, address, and telephone number;
- (2) The operator's name, address, and telephone number;
- (3) The street address of the public swimming pool;
- (4) The physical location of the public swimming pool;
- (5) The type of public swimming pool;
- (6) The construction date, if applicable;
- (7) The proposed operating dates;
- (8) The type of disinfection; and
- (9) The signature of the owner or a designated representative of the owner. (Code 1981, § 31-45-5, enacted by Ga. L. 2000, p. 549, § 3.)

Code Commission notes. — Ga. L. 2000, p. 126, § 1, Ga. L. 2000, p. 526, § 1, and Ga. L. 2000, p. 549, § 3 all enacted a Chapter 43 of Title 31. Pursuant to Code Section 28-9-5, in 2000, the chapter enacted by Ga. L. 2000, p. 526, § 1 has been

redesignated as Chapter 44 of Title 31 and the Code sections therein redesignated accordingly. The chapter enacted by Ga. L.

2000, p. 549, § 3 has been redesignated as Chapter 45 of Title 31 and the Code sections therein redesignated accordingly.

31-45-6. Construction of public swimming pools.

Construction of public swimming pools and additions and alterations to such pools may start only upon issuance and receipt of a permit pursuant to Code Section 31-45-4 and shall be in compliance with plans and data submitted in accordance with Code Section 31-45-5 and other data approved by the county board of health of the county in which each pool is located. (Code 1981, § 31-45-6, enacted by Ga. L. 2000, p. 549, § 3.)

Code Commission notes. — Ga. L. 2000, p. 126, § 1, Ga. L. 2000, p. 526, § 1, and Ga. L. 2000, p. 549, § 3 all enacted a Chapter 43 of Title 31. Pursuant to Code Section 28-9-5, in 2000, the chapter enacted by Ga. L. 2000, p. 526, § 1 has been redesignated as Chapter 44 of Title 31 and the Code sections therein redesignated

accordingly. The chapter enacted by Ga. L. 2000, p. 549, § 3 has been redesignated as Chapter 45 of Title 31 and the Code sections therein redesignated accordingly.

Pursuant to Code Section 28-9-5, in 2000, “31-45-4” was substituted for “31-43-4” and “31-45-5” was substituted for “31-43-5” in this Code section.

31-45-7. Notification for inspection.

A permittee shall notify the county board of health at the time of completion of the construction of a public swimming pool to permit inspection before the pool is placed in operation. (Code 1981, § 31-45-7, enacted by Ga. L. 2000, p. 549, § 3.)

Code Commission notes. — Ga. L. 2000, p. 126, § 1, Ga. L. 2000, p. 526, § 1, and Ga. L. 2000, p. 549, § 3 all enacted a Chapter 43 of Title 31. Pursuant to Code Section 28-9-5, in 2000, the chapter enacted by Ga. L. 2000, p. 526, § 1 has been

redesignated as Chapter 44 of Title 31 and the Code sections therein redesignated accordingly. The chapter enacted by Ga. L. 2000, p. 549, § 3 has been redesignated as Chapter 45 of Title 31 and the Code sections therein redesignated accordingly.

31-45-8. Inspections by the county board of health.

Each public swimming pool shall be inspected by the county board of health to determine compliance with this chapter and with the rules and regulations adopted by the Department of Public Health. Pools which open on or after April 1 and which close on or before October 31 shall be inspected at least once during the period of operation. All other pools shall be inspected at least twice a year. (Code 1981, § 31-45-8, enacted by Ga. L. 2000, p. 549, § 3; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214.)

The 2011 amendment, effective July 1, 2011, substituted “Department of Public Health” for “Department of Community Health” in the first sentence of this Code section.

Code Commission notes. — Ga. L. 2000, p. 126, § 1, Ga. L. 2000, p. 526, § 1, and Ga. L. 2000, p. 549, § 3 all enacted a Chapter 43 of Title 31. Pursuant to Code Section 28-9-5, in 2000, the chapter en-

acted by Ga. L. 2000, p. 526, § 1 has been redesignated as Chapter 44 of Title 31 and the Code sections therein redesignated accordingly. The chapter enacted by Ga. L. 2000, p. 549, § 3 has been redesignated as Chapter 45 of Title 31 and the Code sections therein redesignated accordingly.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

31-45-9. Suspension or revocation of permit.

A permit for a public swimming pool may be suspended or revoked by the county board of health for failure to comply with the provisions of this chapter and the rules and regulations adopted by the Department of Public Health. (Code 1981, § 31-45-9, enacted by Ga. L. 2000, p. 549, § 3; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214.)

The 2011 amendment, effective July 1, 2011, substituted “Department of Public Health” for “Department of Community Health” at the end of this Code section.

Code Commission notes. — Ga. L. 2000, p. 126, § 1, Ga. L. 2000, p. 526, § 1, and Ga. L. 2000, p. 549, § 3 all enacted a Chapter 43 of Title 31. Pursuant to Code Section 28-9-5, in 2000, the chapter enacted by Ga. L. 2000, p. 526, § 1 has been

redesignated as Chapter 44 of Title 31 and the Code sections therein redesignated accordingly. The chapter enacted by Ga. L. 2000, p. 549, § 3 has been redesignated as Chapter 45 of Title 31 and the Code sections therein redesignated accordingly.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

31-45-10. Rules and regulations.

(a) The Department of Public Health shall adopt and promulgate rules and regulations concerning the construction and operation of public swimming pools. The Department of Public Health shall classify public swimming pools on the basis of size, usage, type, or any other appropriate factor and shall adopt requirements for each classification. The rules shall include requirements for:

- (1) Submission and review of plans prior to construction;
- (2) Application, review, expiration, renewal, and revocation or suspension of an operating permit;
- (3) Inspection;
- (4) Design and construction including materials, depth and other dimensions, and standards for the abatement of suction hazards; and
- (5) Operation and safety including water source, water quality and testing, fencing, water treatment, chemical storage, toilet and bath

facilities, measures to ensure the personal cleanliness of bathers, safety equipment, and sewage and other waste-water disposal.

Public swimming pools constructed or remodeled prior to December 31, 2000, that do not meet specific design and construction requirements of the rules and regulations for public swimming pools adopted by the Department of Public Health shall not be required to comply with design and construction requirements other than requirements related to the abatement of suction hazards. Public swimming pools constructed or remodeled prior to December 31, 2000, shall comply with all other rules and regulations for public swimming pools adopted by the Department of Public Health by January 1, 2003.

(b) No single drain, single-suction outlet public swimming pool shall be allowed to operate unless a protective cover is properly installed. (Code 1981, § 31-45-10, enacted by Ga. L. 2000, p. 549, § 3; Ga. L. 2001, p. 4, § 31; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214.)

The 2011 amendment, effective July 1, 2011, substituted “Department of Public Health” for “Department of Community Health” throughout subsection (a).

Code Commission notes. — Ga. L. 2000, p. 126, § 1, Ga. L. 2000, p. 526, § 1, and Ga. L. 2000, p. 549, § 3 all enacted a Chapter 43 of Title 31. Pursuant to Code Section 28-9-5, in 2000, the chapter enacted by Ga. L. 2000, p. 526, § 1 has been

redesignated as Chapter 44 of Title 31 and the Code sections therein redesignated accordingly. The chapter enacted by Ga. L. 2000, p. 549, § 3 has been redesignated as Chapter 45 of Title 31 and the Code sections therein redesignated accordingly.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

31-45-11. Enforcement of rules and regulations.

Each county board of health and its duly authorized agents are authorized and empowered to enforce compliance with the provisions of this chapter and the rules and regulations relating to public swimming pools adopted and promulgated by the Department of Public Health and, in connection therewith, to enter upon and inspect the premises of a public swimming pool at any reasonable time and in a reasonable manner. (Code 1981, § 31-45-11, enacted by Ga. L. 2000, p. 549, § 3; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214.)

The 2011 amendment, effective July 1, 2011, substituted “Department of Public Health” for “Department of Community Health” in the middle of this Code section.

Code Commission notes. — Ga. L. 2000, p. 126, § 1, Ga. L. 2000, p. 526, § 1, and Ga. L. 2000, p. 549, § 3 all enacted a Chapter 43 of Title 31. Pursuant to Code

Section 28-9-5, in 2000, the chapter enacted by Ga. L. 2000, p. 526, § 1 has been redesignated as Chapter 44 of Title 31 and the Code sections therein redesignated accordingly. The chapter enacted by Ga. L. 2000, p. 549, § 3 has been redesignated as Chapter 45 of Title 31 and the Code sections therein redesignated accordingly.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

31-45-12. Inspection of unregulated pools.

Notwithstanding any provision of Code Section 31-45-13 regarding the applicability of this chapter to the contrary, a resident or owner of an apartment complex that is not subject to regulation under this chapter or local ordinance may request that the county board of health inspect a pool at such apartment complex. Upon receipt of such a request, the county board of health shall have the authority to inspect such pool at any reasonable time and in a reasonable manner and issue a report on the condition of such pool. (Code 1981, § 31-45-12, enacted by Ga. L. 2000, p. 549, § 3.)

Code Commission notes. — Ga. L. 2000, p. 126, § 1, Ga. L. 2000, p. 526, § 1, and Ga. L. 2000, p. 549, § 3 all enacted a Chapter 43 of Title 31. Pursuant to Code Section 28-9-5, in 2000, the chapter enacted by Ga. L. 2000, p. 526, § 1 has been redesignated as Chapter 44 of Title 31 and the Code sections therein redesignated

accordingly. The chapter enacted by Ga. L. 2000, p. 549, § 3 has been redesignated as Chapter 45 of Title 31 and the Code sections therein redesignated accordingly.

Pursuant to Code Section 28-9-5, in 2000, “31-45-13” was substituted for “31-43-13” in this Code section.

31-45-13. Applicability of chapter.

The provisions of this chapter shall apply only in those counties where local rules and regulations governing public swimming pools are not in effect on December 31, 2000. Nothing in this chapter shall be construed to limit the authority of a county to adopt an ordinance or resolution regarding public swimming pools that applies to apartment complex pools. (Code 1981, § 31-45-13, enacted by Ga. L. 2000, p. 549, § 3.)

Code Commission notes. — Ga. L. 2000, p. 126, § 1, Ga. L. 2000, p. 526, § 1, and Ga. L. 2000, p. 549, § 3 all enacted a Chapter 43 of Title 31. Pursuant to Code Section 28-9-5, in 2000, the chapter enacted by Ga. L. 2000, p. 526, § 1 has been

redesignated as Chapter 44 of Title 31 and the Code sections therein redesignated accordingly. The chapter enacted by Ga. L. 2000, p. 549, § 3 has been redesignated as Chapter 45 of Title 31 and the Code sections therein redesignated accordingly.

CHAPTER 46

NEWBORN UMBILICAL CORD BLOOD BANK

Sec.		Sec.	
31-46-1.	Legislative findings.	31-46-4.	Georgia Commission for Saving the Cure; creation; membership; appointment; terms of office; duties.
31-46-2.	Definitions.	31-46-5.	Funding; requirements of federal law.
31-46-3.	Newborn Umbilical Cord Blood Bank for postnatal tissue and fluid; creation; donations and information concerning donations.		

Editor's notes. — Ga. L. 2007, p. 473, § 1/SB 148, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Saving the Cure Act.' This Act may also be known and cited as 'Keone's Law.'"

Law reviews. — For note on 2007 enactment of this chapter, see 24 Ga. St. U.L. Rev. 211 (2007).

31-46-1. Legislative findings.

The General Assembly finds and declares that it shall be the public policy of this state to encourage the donation, collection, and storage of stem cells collected from postnatal tissue and fluid and to make such stem cells available for medical research and treatment; to promote principled and ethical stem cell research; and to encourage stem cell research with immediate clinical and medical applications. (Code 1981, § 31-46-1, enacted by Ga. L. 2007, p. 473, § 2/SB 148.)

31-46-2. Definitions.

As used in this chapter, the term:

(1) "Amniotic fluid" means the fluid inside the amnion.

(2) "Permitted stem cell research" means stem cell research permitted under federal law and Senate Resolution 30, the "Hope Offered through Principled and Ethical Stem Cell Research Act," as approved by the United States Senate on April 11, 2007.

(3) "Placenta" means the organ that forms on the inner wall of the human uterus during pregnancy.

(4) "Postnatal tissue and fluid" means the placenta, umbilical cord, and amniotic fluid expelled or extracted in connection with the birth of a human being.

(5) "Stem cells" means unspecialized or undifferentiated cells that can self-renew and have the potential to differentiate into specialized cell types.

(6) "Umbilical cord" means the gelatinous tissue and blood vessels connecting an unborn human being to the placenta. (Code 1981, § 31-46-2, enacted by Ga. L. 2007, p. 473, § 2/SB 148.)

31-46-3. Newborn Umbilical Cord Blood Bank for postnatal tissue and fluid; creation; donations and information concerning donations.

(a) Not later than June 30, 2008, the Georgia Commission for Saving the Cure, as created in Code Section 31-46-4, shall establish a network of postnatal tissue and fluid banks in partnership with one or more public or private colleges or universities, public or private hospitals, nonprofit organizations, or private firms in this state for the purpose of collecting and storing postnatal tissue and fluid. The bank network, which shall be known as the Newborn Umbilical Cord Blood Bank, shall make such tissue and fluid available for medical research and treatment in accordance with this chapter.

(b) The Georgia Commission for Saving the Cure shall develop a program to educate pregnant patients with respect to the banking of postnatal tissue and fluid. The program shall include:

(1) Notice of the existence of the Newborn Umbilical Cord Blood Bank;

(2) An explanation of the difference between public and private banking programs;

(3) The medical process involved in the collection and storage of postnatal tissue and fluid;

(4) The current and potential future medical uses of stored postnatal tissue and fluid;

(5) The benefits and risks involved in the banking of postnatal tissue and fluid; and

(6) The availability and cost of storing postnatal tissue and fluid in public and private umbilical cord blood banks.

(c) Beginning June 30, 2009, all physicians and hospitals in this state shall inform pregnant patients of the full range of options for donation of postnatal tissue and fluids no later than 30 days from the commencement of the patient's third trimester of pregnancy or at the first consultation between the attending physician or the hospital, whichever is later; provided, however, that this subsection shall not be

construed to require the participation of any physician who objects to the transfusion or transplantation of blood on the basis of bona fide religious beliefs.

(d) Nothing in this Code section shall be construed to prohibit a person from donating postnatal tissue or fluid to a private blood and tissue bank or storing postnatal tissue or fluid with a private blood and tissue bank.

(e) Any college or university, hospital, nonprofit organization, or private firm participating in the Newborn Umbilical Cord Blood Bank shall have or be subject to an institutional review board which shall be available on an ongoing basis to review the research procedures and conduct of any person desiring to conduct research with postnatal tissue and fluid from the bank. The institutional review board shall establish procedures to protect and ensure the privacy rights of postnatal tissue and fluid donors consistent with applicable federal guidelines. (Code 1981, § 31-46-3, enacted by Ga. L. 2007, p. 473, § 2/SB 148.)

31-46-4. Georgia Commission for Saving the Cure; creation; membership; appointment; terms of office; duties.

(a) There is created the Georgia Commission for Saving the Cure which shall consist of 15 members appointed as provided in this Code section. The commission shall be assigned to the Department of Public Health for administrative purposes only, as prescribed in Code Section 50-4-3.

(b) Seven members shall be appointed by the Governor. The Governor shall appoint four members to serve initial terms of three years and three members to serve initial terms of two years. Thereafter, successors to such initial appointees shall serve terms of three years. The Governor shall designate one of the persons so appointed to be the chairperson of the commission. If the chief executive officer of the Georgia Research Alliance is not appointed by the Governor or any other appointing authority to serve on the commission, he or she shall serve as an advisory member.

(c) Four members shall be appointed by the Lieutenant Governor or, if the Lieutenant Governor belongs to a political party other than the political party to which a majority of the members of the Senate belong, by the Senate Committee on Assignments. Of these four members, there shall be at least one of each of the following: a physician licensed to practice medicine in this state; a recognized medical ethicist with an accredited degree in medicine, medical ethics, or theology; a medical researcher in permitted stem cell research; and an attorney with experience in health policy law. The Lieutenant Governor or Senate

Committee on Assignments shall appoint two members to serve initial terms of three years and two members to serve initial terms of two years. Thereafter, successors to such initial appointees shall serve terms of three years.

(d) Four members shall be appointed by the Speaker of the House of Representatives. Of these four members, there shall be at least one of each of the following: a physician licensed to practice medicine in this state; a recognized medical ethicist with an accredited degree in medicine, medical ethics, or theology; a medical researcher in permitted stem cell research; and an attorney with experience in health policy law. The Speaker of the House of Representatives shall appoint two members to serve initial terms of three years and two members to serve initial terms of two years. Thereafter, successors to such initial appointees shall serve terms of three years.

(e) Members of the commission shall be eligible to succeed themselves. The initial terms of office shall begin on July 1, 2007. Appointments shall be made by the respective appointing authorities no later than June 15, 2007. Thereafter, appointments of successors shall be made by the respective appointing authority no later than June 1 of the year in which the member's term of office expires. Vacancies shall be filled for the unexpired term by the respective appointing authority.

(f) The commission shall meet at least four times per year at the call of the chairperson or upon the request of at least seven of its members.

(g) The commission shall have the following duties and responsibilities:

- (1) To investigate the implementation of this chapter and to recommend any improvements to the General Assembly;

- (2) To make available to the public the records of all meetings of the commission and of all business transacted by the commission;

- (3) To oversee the operations of the Newborn Umbilical Cord Blood Bank established in Code Section 31-46-3, including approving all fees established to cover administration, collection, and storage costs;

- (4) To undertake the Saving the Cure initiative by promoting awareness of the Newborn Umbilical Cord Blood Bank and encouraging donation of postnatal tissue and fluid to the bank;

- (5) To ensure the privacy of persons who donate postnatal tissue and fluid to the Newborn Umbilical Cord Blood Bank pursuant to subsection (a) of Code Section 31-46-3 consistent with applicable federal guidelines;

- (6) To develop a plan for making postnatal tissue and fluid collected under the Saving the Cure initiative available for medical

research and treatment and to ensure compliance with all relevant national practice and quality standards relating to such use;

(7) To develop a plan for private storage of postnatal tissue and fluid for medical treatment or to make potential donors aware of private storage options for said tissue and fluid as deemed in the public interest;

(8) To participate in the National Cord Blood Program and to register postnatal tissue and fluid collected with registries operating in connection with the program;

(9) To make grants and enter into agreements to support permitted stem cell research with immediate and clinical medical applications;

(10) To employ such staff and to enter into such contracts as may be necessary to fulfill its duties and responsibilities under this chapter subject to funding by the General Assembly; and

(11) To report annually to the General Assembly in December of each year concerning the activities of the commission with recommendations for any legislative changes or funding necessary or desirable to fulfill the goals of this chapter.

(h) The commission shall provide for protection from disclosure of the identity of persons making donations to the Newborn Umbilical Cord Blood Bank pursuant to subsection (a) of Code Section 31-46-3.

(i) The commission may request additional funding from any additional source including, but not limited to, federal and private grants.

(j) The commission may establish a separate not for profit organization or foundation for the purposes of supporting the Newborn Umbilical Cord Blood Bank established pursuant to Code Section 31-46-3. (Code 1981, § 31-46-4, enacted by Ga. L. 2007, p. 473, § 2/SB 148; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 6-1/HB 214.)

The 2011 amendment, effective July 1, 2011, substituted “Department of Public Health” for “Division of Public Health of the Department of Community Health” in the second sentence of subsection (a).

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

31-46-5. Funding; requirements of federal law.

Any public funds expended for stem cell research shall conform to the requirements set forth in federal law and Senate Resolution 30, the “Hope Offered through Principled and Ethical Stem Cell Research Act,” as approved by the United States Senate on April 11, 2007. (Code 1981, § 31-46-5, enacted by Ga. L. 2007, p. 473, § 2/SB 148.)

CHAPTER 47

ARTHRITIS PREVENTION AND CONTROL PROGRAM

Sec.

- 31-47-1. Purpose of program; needs assessment; advisory panel; coordination and utilization with other programs.
- 31-47-2. Role and duties of commissioner.

Sec.

- 31-47-3. Acceptance of grants; compliance with federal requirements.

Effective date. — This chapter became effective July 1, 2010.

Editor's notes. — Ga. L. 2010, p. 1143, § 1/HB 1119, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Georgia Arthritis Prevention and Control Act.'"

Ga. L. 2010, p. 1143, § 2/HB 1119, not codified by the General Assembly, provides: "The General Assembly finds that:

"(1) Arthritis encompasses more than 100 diseases and conditions that affect joints, the surrounding tissues, and other connective tissues;

"(2) As one of the most common family of diseases in the United States, arthritis affects nearly one of every five Americans and will impact an estimated 67 million people by the year 2030;

"(3) Arthritis is the most common cause of disability in the United States, limiting daily activities for more than 17.4 million citizens;

"(4) Although prevailing myths inaccurately portray arthritis as an old person's disease, arthritis is a multigenerational disease that has become one of this country's most pressing public health problems;

"(5) This disease has a significant impact on quality of life, not only for the individual who experiences its painful symptoms and resulting disability, but also for family members and caregivers;

"(6) Compounding this picture are the enormous economic and social costs associated with treating arthritis and its complications; in 2003, the costs were \$127.3 billion with \$80.8 billion and \$47 billion attributable to medical care expenditures

and lost earnings, respectively; \$3.9 billion of that was the cost in Georgia;

"(7) Currently, the challenge exists to ensure delivery of effective, but often underutilized, interventions that are necessary in the prevention or reduction of arthritis related pain and disability;

"(8) Although there exists a large quantity of public information and programs about arthritis, it remains inadequately disseminated and insufficient in addressing the needs of specific diverse populations and other underserved groups;

"(9) The Arthritis Foundation, the Centers for Disease Control and Prevention, and the Association of State and Territorial Health Officials have led in the development of a public health strategy, the National Arthritis Action Plan, to respond to this challenge; and

"(10) Educating the public and health care community throughout this state about this devastating disease is of paramount importance and is in every aspect in the public interest and to the benefit of all residents of the State of Georgia."

Ga. L. 2010, p. 1143, § 3/HB 1119, not codified by the General Assembly, provides: "The General Assembly finds that the purposes of this Act are to:

"(1) Create and foster a state-wide program that promotes public awareness and increases knowledge about the causes of arthritis, the importance of early diagnosis and appropriate management, effective prevention strategies, and pain prevention and management;

"(2) Develop knowledge and enhance understanding of arthritis by disseminating educational materials, information on

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research results, services provided, and strategies for prevention and control to patients, health professionals, and the public;

“(3) Establish a solid scientific base of knowledge on the prevention of arthritis and related disabilities through surveillance, epidemiology, and prevention research;

“(4) Utilize educational and training resources and services developed by organizations with appropriate expertise and knowledge of arthritis and use available technical assistance;

“(5) Evaluate the need for improving the quality and accessibility of existing community based arthritis services;

“(6) Heighten awareness about the prevention, detection, and treatment of arthritis among state and local health and human officials, health professionals and providers, and policy makers;

“(7) Implement and coordinate state and local programs and services to reduce the public health burden of arthritis;

“(8) Fund adequately these programs on a state level; and

“(9) Provide lasting improvements in the delivery of health care for individuals with arthritis and their families, thus improving their quality of life while also containing health care costs.”

31-47-1. Purpose of program; needs assessment; advisory panel; coordination and utilization with other programs.

(a) The Department of Public Health shall establish, promote, and maintain an Arthritis Prevention and Control Program in order to raise public awareness, educate consumers, educate and train health professionals, teachers, and human services providers, and for other purposes.

(b) As a part of the Arthritis Prevention and Control Program, the Department of Public Health shall periodically conduct a needs assessment to identify:

(1) Epidemiological and other public health research being conducted within this state;

(2) Available technical assistance and educational materials and programs nation-wide and within this state;

(3) The level of public and professional arthritis awareness;

(4) The needs of people with arthritis, their families, and caregivers;

(5) Educational and support service needs of health care providers, including physicians, nurses, managed care organizations, and other health care providers;

(6) The services available to a person with arthritis;

(7) The existence of arthritis treatment, self-management, physical activity, and other educational programs; and

(8) The existence of rehabilitation services.

(c) The Department of Public Health shall establish and coordinate an advisory panel on arthritis which shall provide nongovernmental

input regarding the Arthritis Prevention and Control Program. Membership shall include, but shall not be limited to, persons with arthritis, public health educators, medical experts on arthritis, providers of arthritis health care, persons knowledgeable in health promotion and education, and representatives of national arthritis organizations and their local chapters.

(d) The Department of Public Health shall use, but shall not be limited to, strategies consistent with the National Arthritis Action Plan and existing state planning efforts to raise public awareness and knowledge about the causes and nature of arthritis, personal risk factors, the value of prevention and early detection, ways to minimize preventable pain, and options for diagnosing and treating the disease.

(e)(1) Subject to appropriation or access to other private or public funds, the Department of Public Health may replicate and use successful arthritis programs and enter into contracts and purchase materials or services from entities with appropriate expertise for such services and materials as are necessary to carry out the goals of the Arthritis Prevention and Control Program.

(2) Subject to appropriation or access to other private or public funds, the Department of Public Health may enter into agreements with national organizations with expertise in arthritis to implement parts of the Arthritis Prevention and Control Program. (Code 1981, § 31-47-1, enacted by Ga. L. 2010, p. 1143, § 4/HB 1119; Ga. L. 2011, p. 705, § 6-3/HB 214; Ga. L. 2011, p. 752, § 31/HB 142.)

The 2011 amendments. — The first 2011 amendment, effective July 1, 2011, substituted “Department of Public Health” for “Department of Community Health” throughout this Code section. The second 2011 amendment, effective May

13, 2011, part of an Act to revise, modernize, and correct the Code, revised punctuation throughout this Code section.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

31-47-2. Role and duties of commissioner.

The commissioner of public health shall:

(1) Provide sufficient staff to implement the Arthritis Prevention and Control Program;

(2) Provide appropriate training for staff of the Arthritis Prevention and Control Program;

(3) Identify the appropriate organizations to carry out the program;

(4) Base the program on the most current scientific information and findings;

(5) Work to increase and improve community based services available to people with arthritis and their family members;

(6) Work with governmental offices, national voluntary health organizations and their local chapters, community and business leaders, community organizations, and health care and human service providers to coordinate efforts and maximize state resources in the areas of prevention, education, detection, pain management, and treatment of arthritis; and

(7) Identify and, when appropriate, use evidence based arthritis programs and obtain related materials and services from organizations with appropriate expertise and knowledge of arthritis. (Code 1981, § 31-47-2, enacted by Ga. L. 2010, p. 1143, § 4/HB 1119; Ga. L. 2011, p. 705, § 6-5/HB 214; Ga. L. 2011, p. 752, § 31/HB 142.)

The 2011 amendments. — The first 2011 amendment, effective July 1, 2011, substituted “commissioner of public health” for “commissioner of community health” in the introductory paragraph of this Code section. The second 2011 amendment, effective May 13, 2011, part

of an Act to revise, modernize, and correct the Code, revised punctuation in paragraphs (1) and (2).

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

31-47-3. Acceptance of grants; compliance with federal requirements.

(a) The commissioner of public health may accept grants, services, and property from the federal government, foundations, organizations, medical schools, and other entities as may be available for the purposes of fulfilling the obligations of this chapter.

(b) The commissioner of public health shall seek any federal waiver or waivers that may be necessary to maximize funds from the federal government to implement this chapter. (Code 1981, § 31-47-3, enacted by Ga. L. 2010, p. 1143, § 4/HB 1119; Ga. L. 2011, p. 705, § 6-5/HB 214.)

The 2011 amendment, effective July 1, 2011, substituted “commissioner of public health” for “commissioner of community health” in subsections (a) and (b).

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

CHAPTER 48

HEALTH CARE COMPACT

Sec.

31-48-1. Compact enacted and entered into by the State of Georgia; text of compact.

Effective date. — This chapter became effective July 1, 2011.

31-48-1. Compact enacted and entered into by the State of Georgia; text of compact.

The Health Care Compact is entered into and enacted into law with all jurisdictions legally joining therein, in the form substantially as follows:

“The Health Care Compact

WHEREAS, the separation of powers, both between the branches of the federal government and between federal and state authority, is essential to the preservation of individual liberty; and

WHEREAS, the Constitution creates a federal government of limited and enumerated powers, and reserves to the States or to the people those powers not granted to the federal government; and

WHEREAS, the federal government has enacted many laws that have preempted state laws with respect to Health Care, and placed increasing strain on State budgets, impairing other responsibilities such as education, infrastructure, and public safety; and

WHEREAS, the Member States seek to increase individual liberty and control over personal Health Care decisions, and believe the best method to achieve these ends is by vesting regulatory authority over Health Care in the States; and

WHEREAS, by acting in concert, the Member States may express and inspire confidence in the ability of each Member State to govern Health Care effectively; and

WHEREAS, the Member States recognize that consent of Congress may be more easily secured if the Member States collectively seek consent through an interstate compact;

NOW THEREFORE, the Member States hereto resolve, and by the adoption into law under their respective state constitutions of the present Health Care Compact, agree, as follows:

Sec. 1. Definitions. As used in this Compact, unless the context clearly indicates otherwise:

‘Commission’ means the Interstate Advisory Health Care Commission.

‘Effective Date’ means the date upon which this Compact shall become effective for purposes of the operation of state and federal law in a Member State, which shall be the latter of:

(a) The date upon which this Compact shall be adopted under the laws of the Member State; or

(b) The date upon which this Compact receives the consent of Congress pursuant to Article I, Section 10, of the United States Constitution, after at least two Member States adopt this Compact.

‘Health Care’ means care, services, supplies, or plans related to the health of an individual and includes, but is not limited to:

(a) Preventative, diagnostic, therapeutic, rehabilitative, maintenance, or palliative care and counseling, service, assessment, or procedure with respect to the physical or mental condition or functional status of an individual or that affects the structure or function of the body;

(b) Sale or dispensing of a drug, device, equipment, or other item in accordance with a prescription; and

(c) An individual or group plan that provides, or pays the cost of, care, services, or supplies related to the health of an individual,

except any care, services, supplies, or plans provided by the United States Department of Defense and United States Department of Veterans Affairs, or provided to Native Americans.

‘Member State’ means a State that is signatory to this Compact and has adopted it under the laws of that State.

‘Member State Base Funding Level’ means a number equal to the total federal spending on Health Care in the Member State during federal fiscal year 2010. On or before the Effective Date, each Member State shall determine the Member State Base Funding Level for its State, and that number shall be binding upon that Member State. The preliminary estimate of the Member State Base Funding Level for the State of Georgia is \$21,556,000,000.00.

‘Member State Current Year Funding Level’ means the Member State Base Funding Level multiplied by the Member State Current Year Population Adjustment Factor multiplied by the Current Year Inflation Adjustment Factor.

‘Member State Current Year Population Adjustment Factor’ means the average population of the Member State in the current year less the

average population of the Member State in federal fiscal year 2010, divided by the average population of the Member State in federal fiscal year 2010, plus 1. Average population in a Member State shall be determined by the United States Census Bureau.

'Current Year Inflation Adjustment Factor' means the Total Gross Domestic Product Deflator in the current year divided by the Total Gross Domestic Product Deflator in federal fiscal year 2010. Total Gross Domestic Product Deflator shall be determined by the Bureau of Economic Analysis of the United States Department of Commerce.

Sec. 2. Pledge. The Member States shall take joint and separate action to secure the consent of the United States Congress to this Compact in order to return the authority to regulate Health Care to the Member States consistent with the goals and principles articulated in this Compact. The Member States shall improve Health Care policy within their respective jurisdictions and according to the judgment and discretion of each Member State.

Sec. 3. Legislative Power. The legislatures of the Member States have the primary responsibility to regulate Health Care in their respective states.

Sec. 4. State Control. Each Member State, within its State, may suspend by legislation the operation of all federal laws, rules, regulations, and orders regarding Health Care that are inconsistent with the laws and regulations adopted by the Member State pursuant to this Compact. Federal and state laws, rules, regulations, and orders regarding Health Care will remain in effect unless a Member State expressly suspends them pursuant to its authority under this Compact. For any federal law, rule, regulation, or order that remains in effect in a Member State after the Effective Date, that Member State shall be responsible for the associated funding obligations in its State.

Sec. 5. Funding.

(a) Each federal fiscal year, each Member State shall have the right to federal monies up to an amount equal to its Member State Current Year Funding Level for that federal fiscal year, funded by Congress as mandatory spending and not subject to annual appropriation, to support the exercise of Member State authority under this Compact. This funding shall not be conditional on any action of or regulation, policy, law, or rule being adopted by the Member State.

(b) By the start of each federal fiscal year, Congress shall establish an initial Member State Current Year Funding Level for each Member State based upon reasonable estimates. The final Member State Current Year Funding Level shall be calculated and funding shall be reconciled by the United States Congress based upon

information provided by each Member State and audited by the United States Government Accountability Office.

Sec. 6. Interstate Advisory Health Care Commission.

(a) The Interstate Advisory Health Care Commission is established. The Commission consists of members appointed by each Member State through a process to be determined by each Member State. A Member State may not appoint more than two members to the Commission and may withdraw membership from the Commission at any time. Each Commission member is entitled to one vote. The Commission shall not act unless a majority of the members are present, and no action shall be binding unless approved by a majority of the Commission's total membership.

(b) The Commission may elect from among its membership a Chairperson. The Commission may adopt and publish bylaws and policies that are not inconsistent with this Compact. The Commission shall meet at least once a year, and may meet more frequently.

(c) The Commission may study issues of Health Care regulation that are of particular concern to the Member States. The Commission may make non-binding recommendations to the Member States. The legislatures of the Member States may consider these recommendations in determining the appropriate Health Care policies in their respective states.

(d) The Commission shall collect information and data to assist the Member States in their regulation of Health Care, including assessing the performance of various State Health Care programs and compiling information on the prices of Health Care. The Commission shall make this information and data available to the legislatures of the Member States. Notwithstanding any other provision in this Compact, no Member State shall disclose to the Commission the health information of any individual, nor shall the Commission disclose the health information of any individual.

(e) The Commission shall be funded by the Member States as agreed to by the Member States. The Commission shall have the responsibilities and duties as may be conferred upon it by subsequent action of the respective legislatures of the Member States in accordance with the terms of this Compact.

(f) The Commission shall not take any action within a Member State that contravenes any State law of this Member State.

Sec. 7. Congressional Consent. This Compact shall be effective on its adoption by at least two Member States and consent of the United States Congress. This Compact shall be effective unless the United

States Congress, in consenting to this Compact, alters the fundamental purposes of this Compact, which are:

(a) To secure the right of the Member States to regulate Health Care in their respective States pursuant to this Compact and to suspend the operation of any conflicting federal laws, rules, regulations, and orders within their States; and

(b) To secure federal funding for Member States that choose to invoke their authority under this Compact, as prescribed by Section 5 above.

Sec. 8. Amendments. The Member States, by unanimous agreement, may amend this Compact from time to time without the prior consent or approval of Congress and any amendment shall be effective unless, within one year, the Congress disapproves that amendment. Any State may join this Compact after the date on which Congress consents to the Compact by adoption into law under its State Constitution.

Sec. 9. Withdrawal; Dissolution. Any Member State may withdraw from this Compact by adopting a law to that effect, but no such withdrawal shall take effect until six months after the Governor of the withdrawing Member State has given notice of the withdrawal to the other Member States. A withdrawing State shall be liable for any obligations that it may have incurred prior to the date on which its withdrawal becomes effective. This Compact shall be dissolved upon the withdrawal of all but one of the Member States." (Code 1981, § 31-48-1, enacted by Ga. L. 2011, p. 30, § 1/HB 461.)

TITLE 32

HIGHWAYS, BRIDGES, AND FERRIES

Chap.

1. General Provisions, 32-1-1 through 32-1-11.
2. Department of Transportation, 32-2-1 through 32-2-81.
3. Acquisition of Property for Transportation Purposes, 32-3-1 through 32-3-39.
4. State, County, and Municipal Road Systems, 32-4-1 through 32-4-123.
5. Funds for Public Roads, 32-5-1 through 32-5-31.
6. Regulation of Maintenance and Use of Public Roads Generally, 32-6-1 through 32-6-248.
7. Abandonment, Disposal, or Leasing of Property Not Needed for Public Road Purposes, 32-7-1 through 32-7-5.
8. Relocation Assistance, 32-8-1 through 32-8-6.
9. Mass Transportation, 32-9-1 through 32-9-14.
10. Public Authorities, 32-10-1 through 32-10-133.
11. Interstate Rail Passenger Network Compact, 32-11-1 through 32-11-9.
12. Georgia Coordinating Committee for Rural and Human Services Transportation, 32-12-1 through 32-12-6.

Administrative rules and regulations. — Rules and regulations of the Department of Transportation, Official Compilation of the Rules and Regulations of the State of Georgia, State Department of Transportation, Chapter 672-1 et seq.

Law reviews. — For article, "Quasi-Municipal Tort Liability in Georgia," see 6 Mercer L. Rev. 287 (1955).

JUDICIAL DECISIONS

Constitutionality of condemnation procedures. — Procedures for taking property established by the Georgia Code of Public Transportation are adequate for the protection of the rights of condemnees, and the procedures do not offend the due process clause or the equal protection

clause of the federal Constitution or the Georgia Constitution. *Coffee v. Atkinson County*, 236 Ga. 248, 223 S.E.2d 648 (1976).

Cited in *Sadtler v. City of Atlanta*, 236 Ga. 396, 223 S.E.2d 819 (1976).

RESEARCH REFERENCES

ALR. — Highway contractor's liability to highway user for highway surface defects, 62 ALR4th 1067.

CHAPTER 1

GENERAL PROVISIONS

Sec.		Sec.	
32-1-1.	Short title.	32-1-6.	Effect of Code Sections 32-1-4 and 32-1-5 on other laws.
32-1-2.	Purpose and legislative intent.	32-1-7.	Disbursement of fines and forfeitures [Repealed].
32-1-3.	Definitions.	32-1-8.	Construction and maintenance of private roads.
32-1-4.	Commissioner's duty to transmit evidence relating to criminal acts against department's property; institution and prosecution of criminal proceedings.	32-1-9.	Enforcement of title by law enforcement officers.
32-1-5.	Powers and duties of Attorney General under Code Section 32-1-4.	32-1-10.	Penalty.
		32-1-11.	Construction of title.

JUDICIAL DECISIONS

Cited in Chandler v. Robinson, 269 Ga. 881, 506 S.E.2d 121 (1998); Evans Timber Co. v. Central of Ga. R.R., 239 Ga. App. 262, 519 S.E.2d 706 (1999).

32-1-1. Short title.

This title shall be known as the “Georgia Code of Public Transportation.” (Code 1933, § 95A-101, enacted by Ga. L. 1973, p. 947, § 1.)

32-1-2. Purpose and legislative intent.

The purpose of this title is to provide a code of statutes for the public roads and other transportation facilities of the state, the counties, and municipalities of Georgia. The legislative intent is to provide an effective legal basis for the organization, administration, and operation of an efficient, modern system of public roads and other modes of transportation. (Code 1933, § 95A-102, enacted by Ga. L. 1973, p. 947, § 1.)

JUDICIAL DECISIONS

Purpose of the Georgia Code of Public Transportation is organization, administration, and operation of an efficient, modern system of public roads as between the state, counties, and municipalities; the statute’s purpose is not to ascertain and fix the status of the public right of use of every road in Georgia. Jordan v. Way, 235 Ga. 496, 220 S.E.2d 258 (1975) (see O.C.G.A. T. 32).
Sign permits. — Although ground had not been broken on a proposed interchange as of the date an applicant submitted applications for permits for outdoor advertising signs, the Georgia Department of Transportation’s denial of the

applications comported with O.C.G.A. §§ 32-1-2, 32-6-74(a), and 32-6-75(a)(18) because the interchange project had progressed to a point such that it constituted an interchange for purposes of § 32-6-75(a)(18) and the proposed sign locations were within the 500-foot blocked out zone established by § 32-6-75(a)(18). *Eagle West, LLC v. Ga. DOT*, 312 Ga. App. 882, 720 S.E.2d 317 (2011).

Cited in *Fulton County v. Davidson*, 253 Ga. 734, 325 S.E.2d 135 (1985); *CSX Transp., Inc. v. Trism Specialized Carriers, Inc.*, 9 F. Supp. 2d 1374 (N.D. Ga. 1998); *Evans Timber Co. v. Central of Ga. R.R.*, 239 Ga. App. 262, 519 S.E.2d 706 (1999).

RESEARCH REFERENCES

ALR. — Power to limit weight of vehicle or its load with respect to use of streets or highways, 75 ALR2d 376.

32-1-3. Definitions.

As used in this title, the term:

(1) “Abandon” means to close permanently to public travel or to relinquish jurisdiction of a preexisting public road by official action as required by Chapter 7 of this title, thereby foreclosing the duty of future maintenance on such preexisting public road.

(2) “Board” means the State Transportation Board.

(3) “Borrow pit” means land from which dirt, gravel, rock, or related material will be excavated and used for a public road purpose. Such land need not be immediately adjacent or contiguous to the road or project under construction, repair, or reconstruction.

(4) “Bridge” means a structure, including the approaches thereto, erected in order:

(A) To afford unrestricted vehicular passage over any obstruction in any public road, including, but not limited to, rivers, streams, ponds, lakes, bays, ravines, gullies, railroads, public highways, and canals; or

(B) To afford unrestricted vehicular passage under or over existing railroads and public roads.

(5) “Commissioner” means the commissioner of transportation.

(6) “Construction” means the planning, location, surveying, designing, supervising, inspecting, and actual building of a new road; or the paving, striping, restriping, modifying for safety purposes, grading, widening, relocation, reconstruction, or other major improvement of a substantial portion of an existing public road together with all activities incident to any of the foregoing.

(7) “County” means either one of the several counties, any division, department, agency, authority, instrumentality, or branch thereof, or the county governing authority, that is, the judge of the probate court, board of county commissioners, county commissioner, or other county officers in charge of the roads, bridges, and revenues of the county.

(8) “Dedication” means the donation by the owner, either expressly or impliedly, and acceptance by the public of property for public road purposes, in accordance with statutory or common-law provisions.

(9) “Department” means the Department of Transportation.

(10) “Federal-aid systems” means those public roads in Georgia comprised of The Dwight D. Eisenhower System of Interstate and Defense Highways and the National Highway System, as those terms are defined in Section 103 of Title 23 of the United States Code.

(11) “Grade crossing” means a crossing at grade of a public road intersecting a track or tracks of a railroad.

(12) “Grade separation structure” means an underpass or overpass as defined in this Code section.

(12.1) “Interstate highways” means any highway which constitutes a part of The Dwight D. Eisenhower System of Interstate and Defense Highways as used in Section 103 of Title 23 of the United States Code.

(13) “Let” means to award a contract to one of several persons who have submitted competitive bids therefor in response to advertisement.

(14) “Limited-access road” means a public highway, road, or street for through traffic, over, from, or to which owners or occupants of abutting land or other persons have no right or easement or only a limited right or easement of access, light, view, or air by reason of the fact that their property abuts upon such limited-access highway, road, or street or for any other reason.

(15) “Maintenance” means the preservation of a public road, including repairs and resurfacing not amounting to construction as defined in this Code section.

(16) “Municipality” means an incorporated city, the governing body of which holds at least six regular meetings each year and which for a period of one year has levied and collected an ad valorem tax on the real property in such city or has for a one-year period performed at least two of the following municipal activities and services:

- (A) Furnished water service;
- (B) Furnished sewage service;

- (C) Furnished garbage collection;
- (D) Furnished police protection;
- (E) Furnished fire protection;
- (F) Assessed and collected business licenses;
- (G) Furnished street lighting facilities.

The term may also refer to any division, department, agency, authority, instrumentality, or branch of a municipality. Where the context requires or otherwise indicates, the term "municipality" may also mean the municipal governing authority, that is, the mayor and council, board of aldermen, board of commissioners, or other chief legislative body of a municipality.

(17) "Negotiated contract" means a contract made without formal advertising for competitive bids.

(18) "Other transportation purposes" or "other public transportation purposes" means any transportation facility designed to transport people or goods, including but not limited to railroads, port and harbor facilities, air transport and airport facilities, mass transportation facilities, as defined in paragraph (2) of subsection (a) of Code Section 32-9-1, transportation projects, as defined by subsection (h) of Section 2 of an Act approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended, and transportation enhancement activities, as defined in Section 101 of Title 23 of the United States Code, as amended by Public Law 102-240 as it existed on January 1, 1993. However, in no event and for no purpose shall the term "other transportation purposes" or "other public transportation purposes" be deemed to include coal slurry pipelines.

(19) "Overpass" means a bridge, including the approaches thereto and all appurtenances thereof, for carrying public road traffic over a railroad or another public road or for providing pedestrian walkways over a public road.

(20) "Person" means any individual, partnership, corporation, association, or private organization of any character.

(21) "Private road" means a privately owned road or way, including any bridge thereon, which is only open for the benefit of one or more individuals and not for the general public. This term also means a road which lies on privately owned land.

(22) "Proposal guaranty" means acceptable surety furnished by a bidder as a guaranty that he will enter into a contract and will furnish contract performance and payment bonds if a contract is awarded to him.

(23) "Protective devices" means gates, flashing light signals, and similar devices or combinations thereof, together with necessary appurtenances, to be installed or in operation at any grade crossing and which comply with the safety standards determined by the department as being adequate at that time for the protection of traffic.

(24) "Public road" means a highway, road, street, avenue, toll road, tollway, drive, detour, or other way that either is open to the public or has been acquired as right of way, and is intended to be used for enjoyment by the public and for the passage of vehicles in any county or municipality of Georgia, including but not limited to the following public rights, structures, sidewalks, facilities, and appurtenances incidental to the construction, maintenance, and enjoyment of such rights of way:

- (A) Surface, shoulders, and sides;
- (B) Bridges;
- (C) Causeways;
- (D) Viaducts;
- (E) Ferries;
- (F) Overpasses;
- (G) Underpasses;
- (H) Railroad grade crossings;
- (I) Tunnels;
- (J) Signs, signals, markings, or other traffic control devices;

(K) Buildings for public equipment and personnel used for or engaged in administration, construction, or maintenance of such ways or research pertaining thereto;

- (L) Wayside parks;
- (M) Parking facilities;
- (N) Drainage ditches;
- (O) Canals and culverts;
- (P) Rest areas;
- (Q) Truck-weighing stations or check points; and

(R) Scenic easements and easements of light, air, view, and access.

(25) "Right of way" means, generally, property or any interest therein, whether or not in the form of a strip, which is acquired for or devoted to a public road.

(26) "Scenic easement" means a servitude devised to permit land to remain in private ownership for its normal agricultural, residential, or other use consistent with public road purposes but at the same time placing a control over the future uses of the area to maintain its scenic, landscape, sightly, or safety values for the public road which the land adjoins.

(27) "State agency" means any division, department, instrumentality, branch, or other body of the state to which state governmental functions have been delegated.

(27.1) "State roads" or "state routes" means those roads which are defined under paragraph (1) of Code Section 32-4-1.

(28) "Subcontract" means a contract by which one agrees with a party to another contract to perform all or a part of such other contract.

(29) "Underpass" means a bridge, including the approaches thereto and all appurtenances thereof, which provides access for a public road underneath a railroad or another public road or for a pedestrian walkway underneath a public road.

(30) "Utility" means any publicly, privately, or cooperatively owned line, facility, or system for producing, transmitting, or distributing communications, power, electricity, light, heat, gas, oil products, water, steam, clay, waste, storm water not connected with highway drainage, and other similar services and commodities, including publicly owned fire and police signals and street lighting systems, which directly or indirectly serve the public. This term also means a person, municipal corporation, county, state agency, or public authority which owns or manages a utility as defined in this paragraph.

(31) "Vehicle" means a device in, upon, or by which any person or property is or may be transported or drawn upon a public road. (Code 1933, § 95A-104, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1974, p. 1422, §§ 1, 2; Ga. L. 1976, p. 775, § 1; Ga. L. 1977, p. 267, § 1; Ga. L. 1979, p. 973, § 1; Ga. L. 1980, p. 590, § 4; Ga. L. 1982, p. 3, § 32; Ga. L. 1983, p. 3, § 23; Ga. L. 1993, p. 914, § 1; Ga. L. 2000, p. 136, § 32; Ga. L. 2005, p. 601, § 1/SB 160; Ga. L. 2011, p. 583, § 1/HB 137.)

The 2011 amendment, effective July 1, 2011, in the middle of the introductory paragraph of paragraph (24), inserted "that either is", inserted "or has been

acquired as right of way," and substituted "is intended to be used for enjoyment by the public" for "intended or used for its enjoyment"; and deleted "and traffic" pre-

ceding "signals" near the end of the first sentence of paragraph (30).

Law reviews. — For survey article on construction law for the period from June

1, 2002 through May 31, 2003, see 55 Mercer L. Rev. 85 (2003). For annual survey of local government law, see 56 Mercer L. Rev. 351 (2004).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1882, § 684; former Civil Code 1895, § 603; former Civil Code 1910, §§ 748, 761, 768; and former Code 1933, § 95-1001, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section.

Delegation to contractor permitted. — Nothing in O.C.G.A. § 32-1-3(24)(J) or O.C.G.A. § 32-2-2(a)(3) prevents the Georgia Department of Transportation from delegating the responsibility for designing and implementing a traffic control plan to a private contractor. *Comanche Constr., Inc. v. DOT*, 272 Ga. App. 766, 613 S.E.2d 158 (2005).

Sidewalk is included in term "public roads." *Broadnax v. City of Atlanta*, 149 Ga. App. 611, 255 S.E.2d 86 (1979).

Unopened, undeveloped, proposed roads in a subdivision do not become "public roads" solely by virtue of the process of implied dedication and acceptance. *Chatham County v. Allen*, 261 Ga. 177, 402 S.E.2d 718 (1991).

Word "bridge," in this section giving a right of action against a county for defective construction, means a bridge used as an instrumentality for travel along a highway and for crossing streams or ravines. *Hubbard v. County of Fulton*, 144 Ga. 363, 87 S.E. 281 (1915); *Ellis v. Floyd County*, 24 Ga. App. 717, 102 S.E. 181 (1920); *Berrien County v. Vickers*, 73 Ga. App. 863, 38 S.E.2d 619 (1946) (decided under former Civil Code 1910, § 748 and former Code 1933, § 95-1001).

Public bridge. — Bridge which constitutes a portion of the public road is necessarily a public bridge. *Early County v. Fain*, 2 Ga. App. 288, 58 S.E. 528 (1907) (decided under former Civil Code 1895, § 603).

Public bridge includes toll bridge owned by individual. — If a person

owning land on both sides of a stream built a bridge across the stream for the use of the public, and charged tolls, such a bridge is a public bridge. *Dougherty County v. Tift*, 75 Ga. 815 (1885) (decided under former Code 1882, § 684).

Public bridge includes all abutments and approaches. — Term "bridges" includes all the appurtenances necessary to the bridge's proper use and embraces the bridge's abutments and approaches, and that which is necessary as an approach, to connect the bridge with the highway, is an essential part of the bridge itself. *Howington v. Madison County*, 126 Ga. 699, 55 S.E. 941 (1906); *Havird v. Richmond County*, 176 Ga. 722, 168 S.E. 897, answer conformed to, 47 Ga. App. 580, 171 S.E. 220 (1933); *Warren County v. Battle*, 48 Ga. App. 240, 172 S.E. 673 (1934); *Berrien County v. Vickers*, 73 Ga. App. 863, 38 S.E.2d 619 (1946) (decided under former Civil Code 1895, § 603; former Civil Code 1910, § 748; and former Code 1933, § 95-1001).

Public bridge includes fill or embankment in a road which constitutes the approach to a bridge and which is necessary to make access to the bridge a part of the bridge. *Havird v. Richmond County*, 47 Ga. App. 580, 171 S.E. 220 (1933) (decided under former Code 1910, § 748).

Public bridge includes contiguous embankments necessary for access, which county must repair. — Contiguous embankment necessary to make access to a bridge, so as to pass over the bridge, is a part of the bridge, and title to the bridge covers such an embankment, but if the embankment is not a necessary part of the bridge, but a part of the streets of the municipality, the town, and not the county, would be bound to keep the bridge in repair. *Havird v. Richmond County*, 176 Ga. 722, 168 S.E. 897, answer conformed to, 47 Ga. App. 580, 171 S.E. 220 (1933) (decided under former Civil Code 1910, § 748).

Public bridge does not include culverts. — Culvert and a bridge are not the same even though the culvert and bridge may serve the same purpose. *Hubbard v. County of Fulton*, 144 Ga. 363, 87 S.E. 281 (1915); *Ellis v. Floyd County*, 24 Ga. App. 717, 102 S.E. 181 (1920); *Floyd County v. Stewart*, 97 Ga. App. 67, 101 S.E.2d 879 (1958) (decided under former Civil Code 1910, § 748 and former Code 1933, § 95-1001).

Alley and adjoining culvert were "public roads." — Alley and an adjoining drainage culvert and ditch in which a child drowned fell within the definition of "public road" under O.C.G.A. § 32-1-3(24)(N), (O). *Walden v. City of Hawkinsville*, No. 5:03-CV-0398 (DF), 2005 U.S. Dist. LEXIS 21694 (M.D. Ga. Sept. 21, 2005).

Public bridges do not include piping and water boxes. — Piping and water boxes and culverts for drainage purposes across the public roads are not "bridges" within the meaning of the law. *Montgomery County v. Seaboard Air Line Ry.*, 41 Ga. App. 130, 152 S.E. 261 (1930) (decided under former Civil Code 1910, § 748).

Public bridges do not include road leading to bridge. — Word "bridge" does not include the public road leading thereto, or a drain or opening thereunder. *Warren County v. Battle*, 48 Ga. App. 240, 172 S.E. 673 (1934) (decided under former Civil Code 1910, § 748).

Definition of defects in bridge. — Defect in a bridge, which serves as the basis for liability by a county for injuries received by reason thereof, includes any condition of the bridge which renders the bridge unsafe for travelers passing over the bridge. *Havird v. Richmond County*, 47 Ga. App. 580, 171 S.E. 220 (1933) (decided under former Civil Code 1910, § 748).

O.C.G.A. § 32-1-3 does not create liability for counties for defects in bridges. *Coweta County v. Adams*, 221 Ga. App. 868, 473 S.E.2d 558 (1996).

Road striping falls under definition of construction. — Summary judgment pursuant to O.C.G.A. § 9-11-56 was properly granted in the county's action to recover money had and received by the contractor after the contractor asserted

that the contract, which was for road striping and which was not opened for public bidding, was for a specialized service under O.C.G.A. § 32-4-63(5), an exception to the public bidding requirements under O.C.G.A. § 32-4-64; however, O.C.G.A. § 32-1-3(6) expressly defined road striping as a form of road construction and not as a special service. *Howard v. Brantley County*, 260 Ga. App. 330, 579 S.E.2d 758 (2003).

Construction involving moderate road improvement. — Plans or designs for striping or widening a road need only be in conformity with then existing standards for striping and widening. Plans or designs do not need to address design issues outside the scope of the moderate improvements. *Murray v. DOT*, 240 Ga. App. 285, 523 S.E.2d 367 (1999).

County, not Department of Transportation, liable for bridges. — County is liable for damages resulting from a defect in a bridge, although it may appear that jurisdiction over the highway on which the bridge was located had been assumed by the Highway Department (now Department of Transportation) under the terms of the law, and that the department and not the county was guilty of negligence in the maintenance and construction of the bridge or its approaches, which caused the injury. *Berrien County v. Vickers*, 73 Ga. App. 863, 38 S.E.2d 619 (1946) (decided under former Code 1933, § 95-1001).

Jury question as to effect of limited-access road on existing business. — Court erred in limiting a property owner's right to present evidence to show that the owner's access had been substantially restricted when the road on which the business fronted was changed by construction to a limited-access road. Whether a property owner has "reasonable access" to the property under the circumstances and whether the existing access was "substantially interfered with" are questions of fact to be decided by the jury. *Circle K Gen., Inc. v. Department of Transp.*, 196 Ga. App. 616, 396 S.E.2d 522 (1990).

Incumbrance known at time of purchase. — Public road running through a tract of land, which was known to the

purchaser at the time of purchase, is not such an incumbrance on the land as would constitute a breach of a covenant of warranty against incumbrances. *Hood v. Spruill*, 242 Ga. App. 44, 528 S.E.2d 565 (2000).

Railroad grade crossings. — Georgia Code of Public Transportation precluded a common-law cause of action against a railroad for the failure to install adequate protective devices at a grade crossing on a public road since the railroad had not been requested to do so by the appropriate governmental entity. *Southern Ry. v. Georgia Kraft Co.*, 188 Ga. App. 623, 373 S.E.2d 774 (1988).

Railroad was entitled to summary judgment in a survivor's action claiming damages from the survivor's decedent's fatal collision with a train because the survivor

failed to show that the allegedly vision-obstructing vegetation was planted or maintained in violation of any statute, code, or local ordinance and although railroads could be liable under common law negligence principles, the failure to maintain a railroad right of way was addressed by the Georgia Code of Public Transportation, specifically by O.C.G.A. § 32-6-51, and the scope of those provisions encompassed railroads. *Town of Register v. Fortner*, 262 Ga. App. 507, 586 S.E.2d 54 (2003).

Cited in *Wiles v. State*, 161 Ga. App. 473, 288 S.E.2d 271 (1982); *Duncan v. City of Macon*, 221 Ga. App. 710, 472 S.E.2d 455 (1996); *Gilbert v. City of Jackson*, 287 Ga. App. 326, 651 S.E.2d 461 (2007); *Toole v. Georgia-Pacific, LLC*, No. A10A2179, 2011 Ga. App. LEXIS 810 (Jan. 19, 2011).

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Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, § 102-103, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section.

Street or road presumed to include bridges. — Bridges may be a part of city streets, county roads, or the State Aid Highways System; in each case the street or road is defined as including bridges, unless a different meaning is apparent from the context. 1972 Op. Att'y Gen. No. 72-64 (decided under former Code 1933, § 102-103).

Merely deeding privately owned road or driveway to county will not necessarily turn it into a public road. 1980 Op. Att'y Gen. No. U80-37.

Department of Transportation's use of motor fuel tax funds. — Department of Transportation may not utilize motor

fuel tax funds to construct walkways on bridges for fishing. 1975 Op. Att'y Gen. No. 75-96 (decided under former Code 1933, § 102-103).

No expenditure of money on historic preservation if not for transportation. — Department of Transportation may expend federal and state funds on transportation enhancement activities as defined in 23 U.S.C. § 101(a) in those instances where the Code of Public Transportation gives the department the authority to expend such funds, but the Department of Transportation has no authority to expend federal or state money on historic preservation, rehabilitation, and operation of historic transportation buildings, structures, or facilities (including historic railroad facilities and canals) when such buildings, structures, or facilities are not being acquired for transportation purposes. 1993 Op. Att'y Gen. No. 93-3.

RESEARCH REFERENCES

ALR. — Establishment by user of highway running longitudinally on railroad right of way, 46 ALR 893.

Extent of rights in right of way acquired for power or light line, 46 ALR 1463.

Power of public utility commission to

require railroad company to grant or renew leases or other privileges on its right of way, 47 ALR 109.

Construction or maintenance of sewers, water pipes, or the like by public authorities in roadway, street, or alley as indi-

cating dedication or acceptance thereof, 52 ALR2d 263.

Conveyance of right of way, in connec-

tion with conveyance of another tract, as passing fee or easement, 89 ALR3d 767.

32-1-4. Commissioner's duty to transmit evidence relating to criminal acts against department's property; institution and prosecution of criminal proceedings.

(a) As used in this Code section, the term "property of the department" means any property, whether real or personal, which is owned by or in which there is an interest held by the department.

(b) Whenever it may appear to the commissioner that any person or corporation has committed, is committing, has attempted to commit, or is attempting to commit any act which is prohibited by the criminal laws of this state against, or involving in any manner whatsoever, property of the department, he may, in his discretion, transmit such evidence as may be available concerning such act to the Attorney General or to the appropriate prosecuting attorney who may, in his discretion, institute and prosecute the necessary criminal proceedings. (Ga. L. 1980, p. 590, § 1.)

32-1-5. Powers and duties of Attorney General under Code Section 32-1-4.

In carrying out the duties imposed by Code Section 32-1-4, the Attorney General is vested, in addition to and cumulative of the rights, powers, and duties otherwise appertaining to his office, with all of the rights, powers, duties, privileges, obligations, and immunities held by or inuring to any prosecuting attorney. (Ga. L. 1980, p. 590, § 2.)

Cross references. — District attorneys, T. 15, C. 18. Attorney General, T. 45, C. 15.

32-1-6. Effect of Code Sections 32-1-4 and 32-1-5 on other laws.

Nothing in Code Sections 32-1-4 and 32-1-5 shall limit any statutory or common-law right of the state to punish any person or corporation for the violation of any provision of any law. (Ga. L. 1980, p. 590, § 3.)

32-1-7. Disbursement of fines and forfeitures.

Reserved. Repealed by Ga. L. 2000, p. 951, § 2-1, effective July 1, 2001.

Editor's notes. — Ga. L. 2000, p. 951, § 2-1, provided for the repeal of this Code section. Section 13-1 of that Act, not codi-

fied by the General Assembly, provides that the Act becomes fully effective July 1, 2001, but authorizes certain administra-

tive action commencing April 28, 2000, for purposes of appointing certain officials, adopting rules and regulations, employing personnel, and preparing for and phasing in full implementation; provided, however, that the Governor may by executive order extend the date for full implementation of the Act to no later than July 1,

2003. In accordance with an executive order issued June 29, 2001, by the Governor, the repeal of this Code section by Ga. L. 2000, p. 951, became fully effective July 1, 2001.

This Code section was based on Ga. L. 1978, p. 1989, § 4; Ga. L. 1985, p. 149, § 32; Ga. L. 1992, p. 1236, § 1.

32-1-8. Construction and maintenance of private roads.

It shall be unlawful for any official, officer, or employee of the department, the State Road and Tollway Authority, the Georgia Highway Authority, or any similar authority or of any county or municipality to authorize the construction or maintenance of any private road. (Code 1933, § 95A-1102, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 2001, p. 1251, § 2-1.)

Cross references. — Georgia Highway Authority, § 32-10-1 et seq. State Road

and Tollway Authority, § 32-10-60 et seq. Conflicts of interest, § 45-10-20 et seq.

JUDICIAL DECISIONS

Compensated work on private property not prohibited. — O.C.G.A. § 32-1-8 does not prohibit a county from performing grading work on private prop-

erty with county equipment and materials at rates established in a published schedule. *Woodard v. Smith*, 254 Ga. 39, 325 S.E.2d 377 (1985).

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Remuneration does not render work on private property lawful. — Even for payment, a county may not lawfully scrape privately-owned driveways; the county's collection of a fee for provid-

ing this service would not, given the plain language of the statute, make the transaction lawful. 1976 Op. Att'y Gen. No. U76-24.

32-1-9. Enforcement of title by law enforcement officers.

It shall be the duty of all state and local law enforcement officers to enforce any provision of this title which states that any act or omission is unlawful. (Code 1933, § 95A-1103, enacted by Ga. L. 1973, p. 947, § 1.)

32-1-10. Penalty.

(a) Any person who violates any of the provisions of this title for which no specific penalty is provided, whether or not such act or omission is expressly declared elsewhere in this title to be unlawful, or who violates any of the rules and regulations issued under authority of and in accord with the provisions of this title shall be guilty of a

misdemeanor; provided, however, that a violation of Code Sections 32-6-26 and 32-6-27 shall not be considered a crime.

(b) In addition to the penalty provided for in subsection (a) of this Code section, the department shall have the right to enjoin any act or omission so punishable as a misdemeanor or punished otherwise as provided elsewhere in this title. (Code 1933, § 95A-1101, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1978, p. 1989, § 4.)

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Promotion of safety and protection of public investment. — O.C.G.A. §§ 32-1-10, 32-6-23, 32-6-24, 46-7-61 (now repealed) and 46-7-78 (now repealed) are intended to promote the safety of the traveling public and protect the public's investment in the public's roads and highways. 1981 Op. Att'y Gen. No. U81-17.

When Department of Transporta-

tion officers may selectively stop vehicles. — Department of Transportation enforcement officers may not selectively stop vehicles unless the officers have an articulate and reasonable suspicion that the operator is violating, or the vehicle is in violation of, the law. 1987 Op. Att'y Gen. No. U87-31.

32-1-11. Construction of title.

This title shall be construed liberally to effectuate its purposes. (Code 1933, § 95A-103, enacted by Ga. L. 1973, p. 947, § 1.)

JUDICIAL DECISIONS

Cited in National Adv. Co. v. Department of Transp., 149 Ga. App. 334, 254 S.E.2d 571 (1979).

CHAPTER 2

DEPARTMENT OF TRANSPORTATION

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Sec.		Sec.	
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		32-2-81.	"Design-build procedure" defined; procedures for utilization; receipt of letters of interest; limitation on contracting; summary projects.

Cross references. — Georgia Regional Transportation Authority, T. 50, C. 32.

Editor's notes. — Ga. L. 2004, p. 898, § 2, not codified by the General Assembly, provides that: "The department will form a pilot program that will provide a state level flow through point for any available federal funding or other forms of financial and development sources and assistance for local, regional, and public-private streetcar projects. Any funding through

bonds for such pilot and grant program shall be administered by the State Road and Tollway Authority." This provision for a pilot program was repealed by Ga. L. 2006, p. 498, § 5/SB 150.

Administrative rules and regulations. — Rules of general applicability, Official Compilation of the Rules and Regulations of the State of Georgia, State Department of Transportation, Chapter 672-1.

RESEARCH REFERENCES

Am. Jur. Trials. — Actions Against Road Contractors for Inadequate Warning of Construction Hazards, 72 Am. Jur. Trials 215.

ARTICLE 1

GENERAL PROVISIONS

32-2-1. Composition of department.

The Department of Transportation shall consist of the State Transportation Board, the commissioner of transportation, the director of planning, the deputy commissioner of transportation, the chief engineer, the treasurer and the assistant treasurer of transportation, and such subordinate employees as may be deemed necessary by the commissioner or the director of planning. (Ga. L. 1919, p. 242, § 1; Ga. L. 1925, p. 208, § 1; Code 1933, § 95-1503, enacted by Ga. L. 1963, p. 3, § 5; Code 1933, § 95A-301, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1994, p. 591, § 1; Ga. L. 2009, p. 976, § 1/SB 200.)

32-2-2. Powers and duties of department generally.

(a) The powers and duties of the department, unless otherwise expressly limited by law, shall include but not be limited to the following:

(1) The department shall plan, designate, improve, manage, control, construct, and maintain a state highway system and shall have control of and responsibility for all construction, maintenance, or any other work upon the state highway system and all other work which may be designated to be done by the department by this title or any other law. However, on those portions of the state highway system lying within the corporate limits of any municipality, the department shall be required to provide only substantial maintenance activities and operations, including but not limited to reconstruction and major resurfacing, reconstruction of bridges, erection and maintenance of official department signs, painting of striping and pavement delineators, furnishing of guardrails and bridge rails, and other major maintenance activities; and, furthermore, the department may by contract authorize and require any rapid transit authority created by the General Assembly to plan, design, and construct, at no cost to the department and subject to the department's review and approval of design and construction, segments of the state highway system necessary to replace those portions of the system which the rapid transit authority and the department agree must be relocated in order to avoid conflicts between the rapid transit authority's facilities and the state highway system;

(2) Except for appropriations to authorize the issuance of general obligation debt for public road work, or to pay such debt, the department shall be the state agency to receive and shall have control and supervision of all funds appropriated for public road work by the state and activities incident thereto from the net proceeds of motor fuel tax, as provided in Article III, Section IX, Paragraph VI(b) of the Constitution of Georgia and any other funds appropriated or provided for by law for such purposes or for performing other functions of the department. If the General Assembly fails to appropriate all of the net proceeds of the motor fuel tax to the department, to the State of Georgia General Obligation Debt Sinking Fund, and to counties for public road work and activities incident thereto, any such unappropriated part of such funds, exclusive of those proceeds required by law to be provided as grants to counties for the construction and maintenance of county roads, shall be made available to the department by the state treasurer, notwithstanding any provisions to the contrary in Part 1 of Article 4 of Chapter 12 of Title 45, the "Budget Act";

(3) The department shall provide for surveys, plans, maps, specifications, and other things necessary in designating, supervising,

locating, abandoning, relocating, improving, constructing, or maintaining the state highway system or any part thereof, or any activities incident thereto, or in doing such other work on public roads as the department may be given responsibility for or control of by law;

(4) The department shall reimburse the Department of Law for expenses incurred when the Attorney General of Georgia assigns any assistant attorney general or any deputy assistant attorney general to perform specific legal services in connection with the validation of any bonds as authorized by Code Section 45-15-16 or in connection with contract lawsuits and the acquisition of rights of way for any project on the state highway system constructed or to be constructed by the department and when such services are designated by the Attorney General to include specific items of legal services involving the trial or preparation for trial of individual condemnation cases, contract lawsuits, and related matters on such project or projects, or a group or series of condemnation cases, contract lawsuits, and related matters in connection with a specific project or projects; provided, however, that no such reimbursement shall be made until the Attorney General has submitted a statement of the expenses of such legal services to the department, which statement shall include the name of the assistant attorney general performing such services, the items of legal services performed and the cost thereof, and, further, that no reimbursement shall be made for the expenses of legal services for contract lawsuits unless such services had the advance approval of the commissioner;

(5) The department shall have the authority to negotiate, let, and enter into contracts with the Georgia Highway Authority, the State Road and Tollway Authority, any person, any state agency, or any county or municipality of the state for the construction or maintenance of any public road or any other mode of transportation or for the benefit of or pertaining to the department or its employees in such manner and subject to such express limitations as may be provided by law;

(6) The department shall have the authority to negotiate and enter into reciprocal agreements and contracts with other states or agencies or subdivisions thereof concerning public roads and other modes of transportation and activities incident thereto;

(7) The department and the State Road and Tollway Authority shall be the proper agencies of the state to discharge all duties imposed on the state by any act of Congress allotting federal funds to be expended for public road and other transportation purposes in this state. The department shall have the authority to accept and use federal funds; to enter into any contracts or agreements with the

United States or its agencies or subdivisions relating to the planning, financing, construction, improvement, operation, and maintenance of any public road or other mode or system of transportation; and to do all things necessary, proper, or expedient to achieve compliance with the provisions and requirements of all applicable federal-aid acts and programs. Nothing in this title is intended to conflict with any federal law; and, in case of such conflict, such portion as may be in conflict with such federal law is declared of no effect to the extent of the conflict;

(8) The department shall have the authority to exercise the right and power of eminent domain and to purchase, exchange, sell, lease, or otherwise acquire or dispose of any property or any rights or interests therein for public road and other transportation purposes or for any activities incident thereto, subject to such express limitations as are provided by law;

(9) The department and its authorized agents and employees shall have the authority to enter upon any lands in the state for the purpose of making such surveys, soundings, drillings, and examinations as the department may deem necessary or desirable to accomplish the purposes of this title; and such entry shall not be deemed a trespass, nor shall it be deemed an entry which would constitute a taking in a condemnation proceeding, provided that reasonable notice is given the owner or occupant of the property to be entered and that such entry shall be done in a reasonable manner with as little inconvenience as possible to the owner or occupant of the property;

(10) In locating, relocating, constructing, improving, or maintaining any road on the state highway system, the department shall have the authority to control or limit access thereto, including the authority to close off or regulate access from any part of any public road on a county road system or municipal street system to the extent necessary in the public interest;

(11) The department shall have the authority to construct and to perform substantial maintenance of public roads within the boundaries of state parks and on main access roads leading into such parks;

(12)(A) The department shall have the authority to formulate, promulgate, and enforce rules and regulations setting minimum safety standards for bridges on federal-aid public roads and to inspect and close any bridge on any such public road which does not comply with the minimum standards set by the department and which the department determines is unsafe for public travel. No new bridge shall be constructed on any such public road without there first having been obtained a permit for its construction from

the department, such permit to be issued only where the proposed bridge will meet the minimum standards set by the department.

(B) The department may inspect and determine the maximum load, weight, and other vehicular dimensions which can be safely transported over each bridge on the state highway system and may post on each such bridge a legible notice showing such maximum safe limits. It shall be unlawful for any person to haul, drive, or bring onto any bridge any vehicle, load, or weight which in any manner exceeds the maximum limits so ascertained and posted on such bridge;

(13) The department shall have the authority to establish, maintain, and operate ferries as part of a public road and to authorize and issue permits for any state agency, any county or municipality, or any private person to establish, maintain, and operate ferries as part of a public road whenever, in the discretion of the department, such ferries are reasonably necessary and in the best interest of the public. All such ferries shall be operated subject to such rules and regulations as the department may adopt to protect the public interest, and the authorization of any such ferry may be revoked whenever, in the discretion of the department, its continued operation is no longer necessary or in the best interest of the public;

(14) The department shall have those duties and powers in regard to programs relating to the Metropolitan Atlanta Rapid Transit Authority established by subsection (i) of Section 8 of an Act approved March 10, 1965 (Ga. L. 1965, p. 2243), particularly as amended by Section 5 of an Act approved March 16, 1971 (Ga. L. 1971, p. 2092);

(15) Reserved;

(16) Reserved;

(17)(A) Subject to general appropriations for such purposes, the department is authorized to plan for and establish a long-term policy in regard to the establishment, development, and maintenance of aviation and aviation facilities in the state; to promote and encourage the use of aviation facilities of the state for air commerce in the state, between the state and other states, and between the state and foreign countries; to cooperate with, counsel, and advise political subdivisions of the state and other departments, boards, bureaus, commissions, agencies, or establishments, whether federal, state, local, public, or private, for the purpose of promoting and obtaining coordination in the planning for and in the establishment, development, construction, maintenance, and protection of a system of air routes, airports, landing fields, and other aviation facilities in the state.

(B) Subject to general appropriations for such purposes, the department is authorized to construct or to contract with any state

agency, political subdivision, authority, or person for the construction of airports and of facilities and appurtenances incident to their operation. The authority and limitations of Article 4 of this chapter pertaining to department contracts and subcontracts for construction of public roads shall likewise apply to such airport construction contracts; provided, however, that such a contract when negotiated with a political subdivision shall not be subject to the limitation of subparagraph (d)(1)(A) of Code Section 32-2-61 pertaining to the average bid price for the 60 day period preceding the making of the contract. Article 1 of Chapter 3 and Chapter 7 of this title shall apply to the acquisition or disposition of land or interests therein for such airport construction.

(C) Subject to general appropriations for such purposes, the department is authorized to establish air markers at appropriate locations throughout the state to facilitate air navigation within the state. Said markers shall consist of painting on appropriately located roofs of buildings the names of towns or cities within which such buildings are located, such names to be painted in sufficient size to be legible under good visibility conditions from a height of at least 3,000 feet. The department is authorized to obtain roof releases from the owners of buildings upon which air markers are to be painted or otherwise to obtain permission from such owners to use such roofs for such purposes and to pay the owners reasonable and nominal rentals therefor if such payment is necessary in order to obtain the appropriate permission for the use of such roofs for such purposes.

(D) Subject to general appropriations for such purposes, the department is authorized to maintain or to control for the maintenance of department owned or department leased airports, their facilities, and appurtenances incident to their operation. The authority and limitations of Article 4 of this chapter pertaining to contracts and subcontracts for maintenance of public roads shall likewise apply to such contracts for the maintenance of such department owned or department leased airports, provided that such a contract when negotiated with a political subdivision shall not be subject to the limitation of subparagraph (d)(1)(A) of Code Section 32-2-61 pertaining to the average bid price for the 60 day period preceding the making of the contract;

(18)(A) Subject to general appropriations and any provisions of Chapter 5 of this title to the contrary notwithstanding, the department is authorized within the limitations provided in subparagraph (B) of this paragraph to provide to municipalities, counties, authorities, and state agencies financial support by contract for clearing, dredging, or maintaining free from obstructions and for

the widening, deepening, and improvement of the ports, seaports, or harbors of this state.

(B)(i) Municipalities, counties, authorities, or state agencies may, by formal resolution, apply to the department for financial assistance provided by this paragraph.

(ii) The department shall review the proposal and, if satisfied that the proposal is in accordance with the purposes of this paragraph, may enter into a contract for expenditure of funds.

(iii) The time of payment and any conditions concerning such funds shall be set forth in the contract.

(C) In addition to subparagraph (A) of this paragraph and subject to general appropriations for such purposes, the department with its own forces or by contract may clear, dredge, or maintain free from obstruction and may widen, deepen, and improve the ports, seaports, or harbors of this state; and

(19) Code Sections 32-3-1 and 32-6-115 notwithstanding, the department may by contract grant to any rapid transit authority created by the General Assembly, under such terms and conditions as the department may deem appropriate, the right to occupy or traverse a portion of the right of way of any road on the state highway system by or with its mass transportation facilities. Furthermore, the department may by contract lease to the rapid transit authority, under such terms and conditions as the department may deem appropriate, the right to occupy, operate, maintain, or traverse by or with its mass transportation facilities any parking facility constructed by the department. Notwithstanding Code Section 48-2-17, all net revenue derived from the lease shall be utilized by the department to offset the cost of constructing any parking facility. Regardless of any financial expenditures by the rapid transit authority, no right of use or lease granted under this paragraph shall merge into or become a property interest of the rapid transit authority. Upon the transfer of the title of the mass transportation facilities to private ownership or upon the operation of the rapid transportation facilities for the financial gain of private persons, such rights granted by the department shall automatically terminate and all rapid transportation facilities shall be removed from the rights of way of the state highway system.

(b) In addition to the powers specifically delegated to it in this title, the department shall have the authority to perform all acts which are necessary, proper, or incidental to the efficient operation and development of the department and of the state highway system and of other modes and systems of transportation; and this title shall be liberally construed to that end. Any power vested by law in the department but

not implemented by specific provisions for the exercise thereof may be executed and carried out by the department in a reasonable manner pursuant to such rules, regulations, and procedures as the department may adopt and subject to such limitations as may be provided by law. (Ga. L. 1919, p. 242, art. 3, §§ 3, 5; Ga. L. 1919, p. 242, art. 4, §§ 1-3; Ga. L. 1919, p. 242, art. 6, § 3; Ga. L. 1922, p. 176, § 1; Ga. L. 1929, p. 260, § 2; Code 1933, §§ 95-1502, 95-1504, 95-1701, 95-1702, 95-1703, 95-1710, 95-1715, 95-1724; Code 1933, §§ 95A-302, 95A-303, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1974, p. 1422, §§ 6-9; Ga. L. 1975, p. 98, §§ 1, 2; Ga. L. 1976, p. 416, § 1; Ga. L. 1976, p. 775, § 2; Ga. L. 1979, p. 973, §§ 2, 3; Ga. L. 1980, p. 773, § 1; Ga. L. 1982, p. 3, § 32; Ga. L. 1983, p. 3, § 56; Ga. L. 1986, p. 10, § 32; Ga. L. 1991, p. 1355, § 1; Ga. L. 1993, p. 1402, § 18; Ga. L. 2000, p. 951, § 2-2; Ga. L. 2001, p. 1251, § 1-1; Ga. L. 2009, p. 848, § 2/SB 85; Ga. L. 2010, p. 863, § 3/SB 296.)

The 2010 amendment, effective July 1, 2010, substituted “state treasurer” for “director of the Office of Treasury and Fiscal Services” near the end of paragraph (a)(2).

Cross references. — Aviation authority, T. 6, C. 5. Further provisions regarding powers and duties of department as regards aviation, §§ 6-1-1, 6-1-2. Powers and duties of department with regard to construction of bicycle trails and bike-ways, § 12-3-115. Erosion and sediment control plan prepared, § 12-7-7.1. Motor fuel and road taxes, T. 48, C. 9. Powers and duties of department regarding welcome centers on federal highways, and installation and operation of vending machines at such centers, § 50-7-12 et seq. Powers and duties of department with regard to intracoastal waterway, T. 52, C. 3.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1985, periods were substituted for semicolons at the end

of subparagraphs (a)(12)(A), (a)(16)(B), (a)(16)(C), (a)(17)(A)-(a)(17)(C), (a)(18)(A) and subdivisions (a)(18)(B)(i)-(a)(18)(B)(iii); and “subparagraph (d)(1)(A)” was substituted for “subparagraph (A) of paragraph (1) of subsection (a)” in subparagraphs (a)(17)(B) and (a)(17)(D).

Pursuant to Code Section 28-9-5, in 1986, “and” was added at the end of subparagraph (a)(18)(C).

Pursuant to Code Section 28-9-5, in 1987, “property” was substituted for “porperty” in paragraph (a)(9) and, in subparagraph (a)(17)(A), “and aviation” was added following the first “aviation” and “and aviation” was deleted following the second “aviation”.

Pursuant to Code Section 28-9-5, in 1994, in subsection (a), “contract lawsuits,” was substituted for “contract law-suits” near the middle of paragraph (a)(4) and “or private,” was substituted for “or private” near the end of subparagraph (a)(17)(A).

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

AUTHORITY OF DEPARTMENT

BRIDGES

1. LIABILITY OF COUNTY
2. LIABILITY OF INDIVIDUAL OWNERS

FERRIES

General Consideration

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1863, § 672; former Code 1873, § 671; former Code 1882, §§ 684, 690; former Civil Code 1895, §§ 616, 622; former Civil Code 1910, § 748; and former Code 1933, §§ 95-302, 95-1504, 95-1701, 95-1715 and 95-1724, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section.

Georgia DOT is an arm of the state and thus may have immunity under the Eleventh Amendment because any recovery would have been paid out of state funds and the fact that Georgia DOT can allocate the DOT's funds in DOT's own discretion and without intervention by the state legislature does not change the fact that these funds are state funds. *Robinson v. Georgia DOT*, 966 F.2d 637 (11th Cir.), cert. denied, 506 U.S. 1022, 113 S. Ct. 660, 121 L. Ed. 2d 586 (1992).

Under O.C.G.A. § 32-2-2, the legislature has delegated to DOT the authority to exercise the right and power of eminent domain for public road and transportation purposes. It follows that DOT is an "arm of the State" for eminent domain purposes, and the trial court correctly held that an action brought against DOT under 42 U.S.C. § 1983 could not be maintained for losses occasioned by pre-condemnation publicity. *Thompson v. DOT*, 209 Ga. App. 353, 433 S.E.2d 623 (1993).

Georgia DOT has immunity under the Eleventh Amendment. — Georgia DOT, which may receive immunity under the eleventh amendment, did not waive the DOT's immunity when plaintiffs sought relief for inverse condemnation of property that was an ancestral cemetery because DOT had consented to suit in state court; the Georgia Constitution expressly reserves the state's immunity in federal court and a waiver in state court does not constitute a waiver in federal court. *Robinson v. Georgia DOT*, 966 F.2d 637 (11th Cir.), cert. denied, 506 U.S. 1022, 113 S. Ct. 660, 121 L. Ed. 2d 586 (1992).

Negligent design. — Contractors were not liable for the negligent design of a

ramp as the Georgia Department of Transportation (DOT) had responsibility for the design of the ramp, notwithstanding the fact that DOT gave the contractors no drawings, that the contractors made suggestions for changes to the ramp, and that the contractors implemented the DOT's design; there was no evidence that the DOT relinquished control of the design to the contractors or that the contract specified that the design of the ramp was the contractors' responsibility. *Fraker v. C.W. Matthews Contr. Co.*, 272 Ga. App. 807, 614 S.E.2d 94 (2005), aff'd, 2007 U.S. App. LEXIS 28793 (11th Cir. 2007).

Standard of care. — Court of appeals declined to impose a higher standard of care on the Georgia Department of Transportation (DOT) in a co-executors' wrongful death actions alleging that the DOT was negligent in failing to inspect a tree and in failing to remove the tree before the tree fell on their parents' car because the waiver of sovereign immunity found in the Georgia Tort Claims Act, O.C.G.A. § 50-21-23(a), provided that the state would be liable for torts in the same manner as a private individual or entity would be liable under like circumstances. *Ga. DOT v. Smith*, No. A11A1579; No. A11A1580; No. A11A2017, 2012 Ga. App. LEXIS 205 (Feb. 29, 2012).

Cited in Hall County Historical Soc'y, Inc. v. Georgia DOT, 447 F. Supp. 741 (N.D. Ga. 1978); *Hendrix v. Department of Transp.*, 188 Ga. App. 429, 373 S.E.2d 264 (1988); *DOT v. Carr*, 254 Ga. App. 781, 564 S.E.2d 14 (2002); *Hubbard v. DOT*, 256 Ga. App. 342, 568 S.E.2d 559 (2002); *Campbell v. State Rd. & Tollway Auth.*, 276 Ga. 714, 583 S.E.2d 32 (2003).

Authority of Department

Enforcement authority granted by O.C.G.A. § 32-2-2 is neither overbroad nor an illegal delegation of legislative functions. *DOT v. Del-Cook Timber Co.*, 248 Ga. 734, 285 S.E.2d 913 (1982).

Delegation to contractor permitted. — Nothing in O.C.G.A. § 32-1-3(24)(J) or O.C.G.A. § 32-2-2(a)(3) prevents the Georgia Department of Transportation from delegating the responsibility for designing and implementing a traffic control plan to a private contractor. *Comanche*

Constr., Inc. v. DOT, 272 Ga. App. 766, 613 S.E.2d 158 (2005).

Department's duties in connection with state highway system. — When the charge in question does in fact state that the Department of Transportation has “general responsibility to design, manage and improve the state highway system,” it seems to capture the essence of the sections the defendant relies upon, which are in fact very broad, general descriptions of the duties of the DOT. The additional material used by the court is drawn from the more specific statutory description of the respective duties of the DOT and municipalities. Thus, O.C.G.A. § 32-2-2 does indeed mention the general duty of the DOT to “designate, improve, manage, control, construct, and maintain.” *Banks v. City of Brunswick*, 529 F. Supp. 695 (S.D. Ga. 1981), *aff'd*, 667 F.2d 97 (11th Cir. 1982).

Authority to maintain state-aid highways. — Court of equity will not interfere with the discretionary action of the State Highway Department (now Department of Transportation) in locating, grading, or improving a state-aid highway, within the area of their legally designated powers, unless such action is arbitrary and amounts to an abuse of the court's discretion. *State Hwy. Dep't v. Strickland*, 213 Ga. 785, 102 S.E.2d 3 (1958).

There is no general duty imposed on the counties to maintain state highways. *Christian v. Monroe County*, 203 Ga. App. 342, 417 S.E.2d 37 (1992); *Hardy v. Candler County*, 214 Ga. App. 627, 448 S.E.2d 487 (1994).

Authority to take property to relocate gas line. — State Highway Department (now Department of Transportation) was authorized to take property for the relocation of the gas company's interstate gas line since it was in the interest of safety and prevented inconvenience to the public using the gas line and since the acquisition was in furtherance of and reasonably for a public state highway use. *Benton v. State Hwy. Dep't*, 111 Ga. App. 861, 143 S.E.2d 396 (1965) (decided under former Code 1933, §§ 95-1701, 95-1715, and 95-1724).

Authority to construct public high-

way through municipalities or cities.

— State Highway Department (now Department of Transportation) may construct public highways through municipalities or cities of this state without their consent. *City of Carrollton v. Walker*, 215 Ga. 505, 111 S.E.2d 79 (1959) (decided under former Code 1933, § 95-1504).

Extending roads through towns without consent. — State Highway Board (now State Transportation Board), on the board's own initiative or acting through a county, has the legal right to extend and improve a state-aid road through the streets of a municipality without the consent of the municipality and even against the municipality's will. *Perkerson v. Mayor of Greenville*, 51 Ga. App. 240, 180 S.E. 22 (1935) (decided under former Code 1933, § 95-1504).

General regulatory power to approve erection of traffic signals. — When the additional portion of the charge objected to here similarly drew from specific applicable statutory language, the court properly noted the general regulatory power of the Department of Transportation to approve the erection of traffic signals. *Banks v. City of Brunswick*, 529 F. Supp. 695 (S.D. Ga. 1981), *aff'd*, 667 F.2d 97 (11th Cir. 1982).

Department lacks exclusive responsibility for all aspects of highway system. — O.C.G.A. § 32-2-2(a)(1) does not place exclusive responsibility for all aspects of the state highway system in the Department of Transportation. *City of Fairburn v. Cook*, 188 Ga. App. 58, 372 S.E.2d 245, *cert. denied*, 188 Ga. App. 911, 372 S.E.2d 245 (1988).

Maintenance of highways within city limits. — When the Department of Transportation fails to maintain those portions of the state highway system lying within a municipality's corporate limits as required by law and when the municipality agreed to perform the necessary maintenance, a municipality can be held liable for such failure under O.C.G.A. § 32-4-93(b). *City of Fairburn v. Cook*, 188 Ga. App. 58, 372 S.E.2d 245, *cert. denied*, 188 Ga. App. 911, 372 S.E.2d 245 (1988).

Authority to remove obstructions. — Management and control of the right of way of the state's system of roads is vested

Authority of Department (Cont'd)

in the Department of Transportation and the department can require the removal of any obstruction placed thereon without express permission. *Crider v. Kelley*, 232 Ga. 616, 208 S.E.2d 444 (1974).

No authority to maintain overgrown area bordering intersection.

— In a wrongful death action, the trial court did not err in finding the Georgia Department of Transportation immune from suit from liability to the decedent's estate and survivors for failing to maintain an overgrown area of shrubbery that bordered an intersection, as neither O.C.G.A. § 32-2-2, when read in concert with O.C.G.A. § 32-4-93, nor O.C.G.A. § 50-21-24(8) imposed liability on the Department; hence, maintenance of the area did not constitute a "substantial" or "other major" maintenance activity. *Welch v. Ga. DOT*, 283 Ga. App. 903, 642 S.E.2d 913 (2007).

Condemnation of public property.

— O.C.G.A. § 32-2-2(b) does not constitute specific authority to Department of Transportation to condemn public property. *DOT v. City of Atlanta*, 255 Ga. 124, 337 S.E.2d 327 (1985).

Bridges**1. Liability of County****Duties of county authorities in maintaining and repairing bridges.**

— County authorities are not insurers of the safety of county bridges, but must only exercise ordinary care in maintaining and repairing the bridges. *Warren County v. Battle*, 48 Ga. App. 240, 172 S.E. 673 (1934) (decided under former Civil Code 1910, § 748).

Definition of "bridge" includes approaches.

— While the word "bridge," as used in former Civil Code 1910, § 748 did not include the public road leading thereto, or a drain or opening thereunder, the statute did include "all the appurtenances necessary to its proper use, and embraces its abutments and approaches and that which is necessary as an approach, to connect the bridge with the highway, is an essential part of the bridge itself." *Warren County v. Battle*, 48 Ga.

App. 240, 172 S.E. 673 (1934) (decided under former Civil Code 1910, § 748).

In an action against a county for damages from the falling of truck through an opening where a public bridge had been into a ravine below, the petition was not subject to demurrer (now motion to dismiss), and the verdict for the plaintiff was not contrary to law or without evidence to support the verdict, under the defendant's contention that the injury was not caused by reason of a "defective bridge" within the meaning of the statute, but from the entire removal of the bridge, for which the county was not liable, since the petition and the evidence showed that at the time of the injury at least a part of the bridge, i.e., the sills constituting a portion of its "approaches," still remained, and the rest of the bridge was then being repaired. *Warren County v. Battle*, 48 Ga. App. 240, 172 S.E. 673 (1934) (decided under former Civil Code 1910, § 748).

2. Liability of Individual Owners**Standard of care required for private toll bridges.**

— Owner of a bridge franchise is bound to exercise only such care and diligence in the construction of a bridge and keeping the bridge in proper order which every prudent man would exert in relation to the same property in view of the object and purpose for which the bridge was erected and used by the prudent man. *Tift v. Towns*, 53 Ga. 47 (1874) (decided under former Code 1873, § 671).

Nonliability during repairs.

— While the proprietor of a toll bridge is having the bridge repaired, in accordance with the proprietor's duty, the floor being taken up and no toll charged, the proprietor's role as a proprietor of a toll bridge is discontinued; and the proprietor is not liable under this section to one injured by reason of the condition of the bridge. *Tift v. Jones*, 52 Ga. 538 (1874) (decided under former Code 1873, § 671).

Private toll bridge without permit prohibited.

— This section did not contemplate a case where a public road crossed a bridge, and where a few people obtained possession by a transfer of a mechanic's lien and proceeded to charge a toll without authority granted to the peo-

ple from some proper source. *Whelchel v. State ex rel. Wiley*, 76 Ga. 644 (1886) (decided under former Code 1882, § 684).

Ferries

Liability for ferry kept for own use.

— One who keeps a ferry for one's own use is not liable except for gross neglect unless one is in the habit of charging a toll. *Self v. Dunn & Brown*, 42 Ga. 528, 5 Am. R. 544 (1871) (decided under former Code 1863, § 672).

When ferry loses private character.

— While the owner of a private ferry may lawfully charge and collect a toll from persons incidentally crossing thereat, should the owner maintain the ferry for use by the public at large or seek public patronage, or pursue the business of keeping up the ferry for the public, the ferry loses the ferry's character as a private ferry. *Hudspeth v. Hall*, 111 Ga. 510, 36 S.E. 770 (1900) (decided under former Code 1895, § 616).

Suits against public ferry operators for loss of property. — Since public

ferry operators are common carriers, no allegation of negligence was necessary in suits brought to recover damages for loss of property accepted for shipment. *Deen v. Wheeler*, 7 Ga. App. 507, 67 S.E. 212 (1910) (decided under former Code 1895, § 622).

Landowner liability. — Under this section, the owner of the land on which a public ferry is situated, unless the ownership of the ferry be separated from that of the land, is liable for negligent torts committed by the ferry operator in the performance of the operator's duties as such, whether the owner objects to the use of the ferry or not. *Printup v. Patton & Jackson*, 91 Ga. 422, 18 S.E. 311 (1893) (decided under former Code 1882, § 690).

Amendment to petition showing liability as landowner permissible. — Petition originally basing liability on ownership of the ferry may be amended to include liability as owner of the land and proof of either will sustain the action. *Deen v. Wheeler*, 7 Ga. App. 507, 67 S.E. 212 (1910) (decided under former Code 1895, § 622).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, §§ 95-1715 and 95-1724, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section.

Department of Transportation control over contemplated tree cutting operations. — Given the Department of Transportation's authority and obligation to control the state highway system, it seems imperative that the department maintain rigid and absolute control over any contemplated tree cutting operations, particularly if those operations are undertaken by private individuals on rights-of-way. 1981 Op. Att'y Gen. No. 81-75.

Authorization to formulate rules related to, and issuance of permits for, cutting of trees and vegetation on rights-of-way does not impinge upon the Department of Transportation's authority and legal obligation to control the state

highway system. 1981 Op. Att'y Gen. No. 81-75.

Department lacks authority to fund county airport project. — Department of Transportation may not help fund completion of airport master planning project for county airport because it would constitute a forbidden assumption of county debt. 1973 Op. Att'y Gen. No. 73-126.

Department of Transportation may enter into transportation construction contracts with financial backing from State Road and Tollway Authority. — Department of Transportation may enter into transportation construction contracts with all or a portion of the financial backing for the contracts coming from a contractual promise from the State Road and Tollway Authority to borrow and provide money to DOT as and when needed to expend on projects that are the subjects of the construction contracts. 2001 Op. Att'y Gen. No. 2001-10.

Department may not contract with individual to maintain federal high-

ways. — Since the state is obligated to follow federal law with reference to interstate highways, the state's making a contract for supplying to an individual the hay cut from rights of way of interstate highways in return for the individual's cutting it would not be acceptable since the federal government requires maintenance contracts to be made with governmental instrumentalities only. 1973 Op. Att'y Gen. No. U73-71.

Authority to issue license for rail line. — Department of Transportation has authority to issue a revocable license to a company constructing and operating a rapid rail passenger service line to cross the rights-of-way of several state routes so long as consideration is received which represents a substantial benefit to the public. 1995 Op. Att'y Gen. No. 95-45.

Department may buy litter bags for distribution. — Department of Transportation may lawfully spend motor fuel tax funds for the purchase of litter bags to be distributed free of charge to motorists at Georgia's welcome stations. 1973 Op. Att'y Gen. No. 73-145.

Carriage upon state aircraft must be limited to state officials and employees on official business of the state and those non-employees from whose carriage the state derives some benefit. The only exceptions may be in those areas exempted from Ga. Const. 1983, Art. III, Sec. VI, Para. VI(a), the gratuities provision of the Constitution, by Ga. Const. 1983, Art. III, Sec. VI, Para. VI(b). 1989 Op. Att'y Gen. No. 89-19.

Use of state-owned aircraft. — If the Governor, Lieutenant Governor, or Speaker of the House must travel on personal or political business, such travel must be accomplished by private means unless the Commissioner of Public Safety has determined that travel on state aircraft is necessary for personal security; otherwise, when any public officer uses a state aircraft for a personal or political reason, the use of the aircraft is contrary to the prohibitions of the gratuities clause and state statutes authorizing the use of state aircraft, even were the official to reimburse the state for the direct costs associated with the trip. 2004 Op. Att'y Gen. No. 04-3.

Department's powers and duties on funding strictly construed. — Powers and duties delegated to the State Highway Department (now Department of Transportation), especially those concerning appropriations and expenditures of state funds, must be strictly construed. 1971 Op. Att'y Gen. No. 71-85 (decided under former Code 1933, §§ 95-1715 and 95-1724).

Department may not fund road outside of state highway system. — Specific powers mentioned in this section do not authorize the State Highway Department (now Department of Transportation) to match federal funds or to purchase rights of way on roads which are not on the official state highway system. 1971 Op. Att'y Gen. No. 71-85 (decided under former Code 1933, §§ 95-1715 and 95-1724).

Department may not reimburse subdivision for rights of way bought outside highway system. — State Highway Department (now Department of Transportation) has no legal authority to reimburse a political subdivision for the cost of any rights of way they may buy for a federal-aid highway improvement project on a road not on the official state highway system. 1971 Op. Att'y Gen. No. 71-85 (decided under former Code 1933, §§ 95-1715 and 95-1724).

Lapse of appropriations that become deobligated. — Appropriated state funds which become deobligated during a subsequent fiscal year are subject to lapse, and may not be applied to contracts for which motor fuel tax appropriations were previously committed. 1993 Op. Att'y Gen. No. 93-9.

Department may not expend money on historic preservation if not for transportation. — Department of Transportation may expend federal and state funds on transportation enhancement activities as defined in 23 U.S.C. § 101(a) in those instances where the Code of Public Transportation gives the department the authority to expend such funds, but the Department of Transportation has no authority to expend federal or state money on historic preservation, rehabilitation, and operation of historic transportation buildings, structures, or facilities (includ-

ing historic railroad facilities and canals) where such buildings, structures, or facilities are not being acquired for transportation purposes. 1993 Op. Att'y Gen. No. 93-3 (decided prior to 1993 amendment of O.C.G.A. § 32-1-3).

Applicability of Fair and Open Grants Act of 1993 to funds expended from funds. — Fair and Open Grants Act of 1993, O.C.G.A. § 28-5-120 et seq., does not apply to disbursements made by the

Department of Transportation pursuant to contracts entered into with private entities, nor to intergovernmental contracts with counties for harbor maintenance; but the Act does apply when funds are disbursed by the department on an unrestricted basis to, or for the benefit of, local governments for public road and other transportation purposes. 1994 Op. Att'y Gen. No. 94-1.

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Highways, Streets, and Bridges, § 12 et seq.

C.J.S. — 39A C.J.S., Highways, § 54.

ALR. — Duty and liability as to lighting bridge, 47 ALR 355.

Constitutionality and construction of statute relating to location or relocation of highways, 63 ALR 516.

Duty as regards barriers for protection of automobile travel, 86 ALR 1389; 173 ALR 626.

Personal liability of highway officers for damage to or trespass upon land in connection with construction or maintenance of highway, 90 ALR 1481.

Power and duty of highway officers as regards location or routes of roads to be constructed or improved, 91 ALR 242.

Validity and applicability of statutes relating to use of highway by private motor carriers and contract motor carriers for hire, 175 ALR 1333.

Construction of highway through park as violation of use to which park property may be devoted, 60 ALR3d 581.

Liability, in motor vehicle-related cases, of governmental entity for injury or death resulting from ice or snow on surface of highway or street, 97 ALR3d 11.

Liability, in motor vehicle-related cases, of governmental entity for injury or death resulting from failure to repair pothole in surface of highway or street, 98 ALR3d 101.

Liability, in motor vehicle-related cases, of governmental entity for injury or death resulting from defect or obstruction on roadside parkway or parking strip, 98 ALR3d 439.

Liability, in motor vehicle-related cases, of governmental entity for injury or death resulting from design, construction, or failure to warn of narrow bridge, 2 ALR4th 635.

Highways: Governmental duty to provide curve warnings or markings, 57 ALR4th 342.

Governmental tort liability as to highway median barriers, 58 ALR4th 559.

32-2-3. Development of transportation plans; public hearings; approval of plans by board; promulgation of rules and regulations.

(a) As used in this Code section, the term:

(1) "Comprehensive plan" means the major transportation facilities described in this Code section as well as collectors and interconnecting routes within or between standard metropolitan areas, urban areas, and rural areas.

(2) "Local governing body" means the governing body of the city, town, municipality, county, or other local governing unit or authority in the area in which the transportation facility will be located.

(3) "Major transportation facility" means:

(A) Any facility primarily designed to transport people or goods rapidly and efficiently, including but not limited to air transport facilities, railroads, bus services, terminals, freeways, expressways, arterial highways, belt highways, and port facilities; or

(B) Any facility or facilities utilized in providing a mass transit system for a standard metropolitan area or urban area.

(4) "Standard metropolitan area" means a county or group of contiguous counties or parts thereof as designated by the department which contains at least one central city of 50,000 inhabitants or more as determined by the latest available federal census or such other population estimate as may be provided by law.

(5) "Transportation corridor" means a strip of land between two termini or central points within which travel, topography, land uses, environment, and other characteristics are evaluated for transportation purposes.

(6) "Urban area" means an area including and adjacent to a municipality and other urban centers having a population of 5,000 or more as determined by the latest available federal census or such other population estimates as may be provided by law within boundaries to be fixed by the department.

(b)(1) The department in conjunction with the affected local governmental bodies, regional planning agencies, and other appropriate state and federal agencies shall develop:

(A) A comprehensive, state-wide, 20 year transportation plan;

(B) A comprehensive transportation plan for all standard metropolitan areas and those areas which the department determines, based upon population projections, will become a standard metropolitan area within 20 years, such plan to supplement and be compatible with the state-wide transportation plan; and

(C) Comprehensive plans for regions and urban areas as such plans are deemed necessary by the department.

(2) Priority for developing comprehensive plans shall be given to areas in which the need for construction of major transportation facilities is anticipated.

(3) In developing comprehensive transportation plans, the department shall take into account:

(A) Future as well as present needs;

(B) All possible alternative modes of transportation;

(C) The joint use of transportation corridors and major transportation facilities for alternate transportation and community uses;

(D) The integration of any proposed system into all other types of transportation facilities in the community or region;

(E) The coordination with other development plans in the community and region so as to facilitate and synchronize growth; and

(F) The total environment of the community and region including land use, state and regional development goals and decisions, population, travel patterns, traffic control features, ecology, pollution effects, esthetics, safety, and social and community values.

(c) In order to ensure an integrated transportation system, the planning, location, and design of transportation facilities shall be coordinated with the appropriate planning agencies and the affected local governmental bodies.

(d)(1) The department may adopt local or regional transportation plans as part of or in lieu of the department's plan.

(2) The department may develop and design plans for arterial and collector roads and streets, vehicular parking areas, other transportation modes and facilities, and other support facilities which are consistent with the department's comprehensive transportation plans. The department may render to local governmental bodies or their planning agencies such technical assistance and services as are necessary so that local plans and facilities are coordinated with the department's plans and facilities.

(e) The department shall develop systematic techniques for considering those factors to be used in developing comprehensive plans pursuant to subsection (b) of this Code section so that all transportation facilities are so planned that they will function as integral parts of the overall plan for community, regional, and state development as portrayed in the comprehensive plans; and these plans shall be updated at reasonable intervals so as to maintain a viable plan for a 20 year planning period.

(f)(1) The department shall, pursuant to its rules and regulations, hold planning hearings at the appropriate state, regional, or local level, at which time the comprehensive transportation plans included in subsection (b) of this Code section shall be presented for discussion and comment.

(2) The department shall, pursuant to its rules and regulations, hold hearings at the appropriate regional or local level for major transportation facilities, or as required by federal law, as follows:

(A) A facility, site, or project corridor hearing, at a time after the selection of the type or types of transportation facility or facilities to be constructed and prior to the final selection of the specific site or corridor of the proposed facility; and

(B) A design hearing, at a time prior to the department's commitment to a specific design proposal for the facility or facilities.

(3) These public hearings shall be conducted so as to provide an opportunity for effective participation by interested persons in transportation policy decisions, the process of transportation planning, modal selections, and site and route selection, and the specific location and design of major transportation facilities. The various factors involved in the decision or decisions and any alternative proposals shall be clearly presented so that the persons attending the hearing may present their views relating to the decision or decisions which will be made. The facility, site, or project corridor hearing and the design hearing for a proposed facility or facilities may be held simultaneously to satisfy the requirements of this subsection.

(4)(A) The department may satisfy the requirements for a public hearing by holding a public hearing or by publishing two notices of opportunity for public hearing in a newspaper having general circulation in the vicinity of the proposed undertaking and holding a public hearing if any written requests for such a hearing are received. The procedure for requesting a public hearing shall be explained in the notice. The deadline for submission of such a request may not be less than 21 days after the publication of the first notice of opportunity for public hearing and no less than 14 days after the date of publication of the second notice of opportunity for public hearing.

(B) A copy of the notice of opportunity for public hearing shall be furnished at the time of publication to the United States Department of Transportation, the appropriate departments of state government, and affected local governments and planning agencies. If no requests are received in response to a notice within the time specified for the submission of requests, the department shall be deemed to have met the hearing requirements.

(C) The opportunity for another public hearing shall be afforded in any case when proposed locations or designs are changed from those presented in the notices specified in this paragraph or at a public hearing so as to have a substantially different transportation service, social, economic, or environmental effect.

(D) The opportunity for a public hearing shall be afforded in each case in which the department is in doubt as to whether a public hearing is required.

(5)(A) When a public hearing is to be held, two notices of such hearing shall be published in a newspaper having general circulation in the vicinity of the proposed undertaking. The first notice shall be published no less than 30 days prior to the date of the hearing and the second notice shall be published no less than five days prior to the date of the hearing.

(B) Copies of the notice for public hearing shall be mailed to the United States Department of Transportation, appropriate departments of state government, and affected local governments and planning agencies.

(g) All long-range comprehensive transportation plans developed pursuant to this Code section shall be submitted to the board for its approval or disapproval.

(h) The department shall promulgate any rules and regulations, consistent with its practices, that it deems necessary in order to implement this title. (Ga. L. 1972, p. 1215, §§ 1-7; Code 1933, § 95A-205, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1982, p. 3, § 32; Ga. L. 1985, p. 149, § 32; Ga. L. 1986, p. 796, § 1; Ga. L. 2001, p. 4, § 32.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1985, periods have been substituted for semicolons at the end of subparagraph (b)(1)(C) and paragraph (b)(2).

Pursuant to Code Section 28-9-5, in 1986, "shall" was substituted for "will" following "Code section" in paragraph (f)(1).

OPINIONS OF THE ATTORNEY GENERAL

Construed with Environmental Policy Act and § 27-3-132. — Factors enumerated in the Environmental Policy Act, O.C.G.A. § 12-16-1 et seq., must be considered when evaluating environmen-

tal concerns under O.C.G.A. § 32-2-3. The provisions of O.C.G.A. § 27-3-132 are not repealed by implication by the Georgia Environmental Policy Act. 1991 Op. Att'y Gen. No. 91-29.

RESEARCH REFERENCES

ALR. — Constitutionality of statute or ordinance denying right of property owners to defeat a proposed street improvement by protest, 52 ALR 883.

Right of private citizen to complain of re-routing of highway or removal or change of route or directional signs, 97 ALR 192.

32-2-4. Information for traveling public.

In order to provide information in the specific interest of the traveling public, the department is authorized to maintain maps and to permit informational directories and advertising pamphlets to be made available at safety rest areas and to establish information centers at safety rest areas for the purpose of informing the public of places of interest

within the state and providing such other information as may be considered desirable. (Ga. L. 1967, p. 423, § 14; Code 1933, § 95A-933, enacted by Ga. L. 1973, p. 947, § 1.)

Cross references. — Installation and operation of vending machines in safety rest areas, § 32-6-116.

32-2-4.1. Gateway Center.

(a) Notwithstanding any other provision of law to the contrary, the department may acquire, construct, operate, and maintain a demonstration safety rest area and information center in Cobb County. For purposes of this Code section, the safety rest area and information center shall be known as the "Gateway Center," but the State Transportation Board may name or designate the center in its discretion. In addition to the powers provided in this Code section, cumulatively, the department shall have the same powers with respect to Gateway Center which the department otherwise enjoys with respect to safety rest areas, information centers, and welcome centers.

(b) The purpose of Gateway Center shall be to act as a "gateway" to all of Georgia. Toward that end it shall provide information, goods, and services which assist road travelers and tell them about Georgia. The center may have any facility and provide any service which furthers those purposes, including by way of illustration, but not limitation:

- (1) Playground equipment;
- (2) Recreation areas;
- (3) Indoor and outdoor eating areas;
- (4) Restaurant, snack bar, and other facilities for purveying food and beverage;
- (5) Vending machines;
- (6) Gift, novelty, and souvenir shops;
- (7) Advertising;
- (8) Information kiosks;
- (9) Multimedia displays;
- (10) Communication services, such as computer Internet connections;
- (11) Parking; and
- (12) Markets.

The prices charged for any service or product shall approximate the prevailing rate within the area for similar items so as not to compete unfairly with private enterprise.

(c) The department may establish a business plan for self-sufficient operation of Gateway Center and may retain for its improvement, maintenance, and operation all miscellaneous funds generated by its operation. Funds not expended for this purpose in the fiscal year in which they are generated shall be deposited in the state treasury. Further, nothing in this Code section may be construed to allow the department to retain any funds required by the Constitution of Georgia to be paid into the state treasury. Except with respect to Code Section 45-12-92 concerning miscellaneous funds, the department must also comply with Part 1 of Article 4 of Chapter 12 of Title 45, the “Budget Act,” in regard to the fiscal operation of the center.

(d) By competitive process or negotiation, in its discretion, the department may contract, rent, license, allow, delegate, or otherwise act to cause private persons, public instrumentalities, and entities and units of state and local government to conduct the activities of the center. The department may accept monetary payments in return for rights and privileges, and it may also accept in-kind consideration, which supports the purposes of this Code section. The agreements under this Code section may allow the second parties to produce and retain revenue and may have a term not exceeding 50 years, whether the party is public or private. However, in no event may the department abrogate its ultimate responsibility or convey the fee, an estate for years, or any other interest in the real property of Gateway Center for the purposes of this Code section.

(e) Gateway Center may be a “welcome center, tourist center, and safety rest area” for purposes of Code Section 49-9-42, and the preference given by Code Sections 49-9-41 and 49-9-42 shall apply to and affect Gateway Center.

(f) Gateway Center shall be a “safety rest area and welcome center” for purposes of Code Section 35-2-32, and the Uniform Division of the Department of Public Safety may have jurisdiction to patrol Gateway Center for the purposes stated in that Code section.

(g) The department may pay the costs of Gateway Center from any lawful fund source, if it can comply with requirements of the fund source and this Code section. Possible sources may include, without limitation, miscellaneous funds from operation, gift, appropriation, proceeds of general obligation debt, funds of cooperating local governments and authorities, and grants by the United States or any agency or instrumentality thereof. (Code 1981, § 32-2-4.1, enacted by Ga. L. 1998, p. 1675, § 1; Ga. L. 2000, p. 1153, § 6; Ga. L. 2012, p. 303, § 6/HB 1146.)

The 2012 amendment, effective July 1, 2012, in subsection (e), substituted "Code Section 49-9-42" for "Code Section 34-15-41 and 34-15-42" and substituted "Code Sections 49-9-41 and 49-9-42" for "Code Sections 34-15-41 and 34-15-42".

32-2-5. Actions by or against department.

(a) The department shall have the authority to bring actions; and it may be sued in such actions as are permitted by law. In addition, the department may adjust and make settlement of any and all claims presented to it under oath.

(b) All actions brought ex contractu by or against the department shall be brought in a county where any part of the work is to be or has been performed. All other actions by or against the department shall be brought in the county in which the cause of action arose. Service upon the department shall be sufficient by serving a second original process issued from the county where the action is filed upon the commissioner personally or by leaving a copy of the same in the office of the commissioner in the Department of Transportation Building, Atlanta, Georgia. (Ga. L. 1919, p. 242, art. 6, § 3; Ga. L. 1925, p. 208, § 4; Code 1933, § 95-1505; Code 1933, § 95A-304, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1974, p. 1422, § 10.)

Law reviews. — For article surveying contracts — legislation, see 34 Mercer L. Rev. 71 (1982).

For note analyzing sovereign immunity in this state and proposing implementa-

tion of a waiver scheme and creation of a court of claims, pursuant to the Georgia Constitution, see 27 Emory L.J. 717 (1978).

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

ACTIONS AGAINST DEPARTMENT

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General Consideration

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, §§ 95-1701, 95-1709, 95-1710, and 95-1720, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section.

Cited in *Habersham County v. Cornwall*, 38 Ga. App. 419, 144 S.E. 55 (1928); *Counihan v. Department of Transp.*, 162 Ga. App. 374, 290 S.E.2d 514 (1982); *Medical Ctr. Hosp. Auth. v.*

Andrews, 162 Ga. App. 687, 292 S.E.2d 197 (1982); *Donaldson v. DOT*, 262 Ga. 49, 414 S.E.2d 638 (1992); *Georgia DOT v. Smith*, 210 Ga. App. 741, 437 S.E.2d 811 (1993).

Actions Against Department

Constitutionality. — See *Andrews v. Department of Transp.*, 133 Ga. App. 78, 210 S.E.2d 30 (1974).

Section does not waive department's immunity. — Only under certain limited and previously recognized circumstances may suits be maintained against

the Department of Transportation; there was no intent by the General Assembly to waive immunity and permit suits for torts against the department. *Andrews v. Department of Transp.*, 133 Ga. App. 78, 210 S.E.2d 30 (1974).

Department of Transportation of the State of Georgia may rely on the defense of sovereign immunity in suits seeking to recover damages for breach of contract. *National Distrib. Co. v. Department of Transp.*, 248 Ga. 451, 283 S.E.2d 470 (1981).

There was no intent by the General Assembly in enacting subsection (a) of O.C.G.A. § 32-2-5 to waive immunity and permit suits for torts against the Department of Transportation. *Huggins v. Georgia Dep't of Transp.*, 165 Ga. App. 178, 300 S.E.2d 195 (1983).

Suit is permissible in several situations. — Suit can be maintained against the State Highway Department (now Department of Transportation) for breach of contract and for recovery of just compensation if private property is taken or damaged for public purposes. *Andrews v. Department of Transp.*, 133 Ga. App. 78, 210 S.E.2d 30 (1974).

Sovereign immunity of the Department of Transportation is pierced by the constitutional right insofar as required by Ga. Const. 1976, Art. I, Sec. III, Para. I (see Ga. Const. 1983, Art. I, Sec. III, Para. I); but no support exists for the argument that a waiver of sovereign immunity exists for an *ex contractu* action against the Department of Transportation which is not predicated upon Ga. Const. 1976, Art. I, Sec. III, Para. I (see Ga. Const. 1983, Art. I, Sec. III, Para. I). *National Distrib. Co. v. Department of Transp.*, 157 Ga. App. 789, 278 S.E.2d 648, *aff'd*, 248 Ga. 451, 283 S.E.2d 470 (1981).

Personal service by authorized person required. — Language in O.C.G.A. § 32-2-5 authorizing service "by leaving a copy [of process] in the office of the commissioner" contemplates that service may be accomplished by personally serving a person in the Department of Transportation building who is authorized or otherwise qualified to receive service; such service must be made by an authorized person, and employing a private delivery

service to deliver a package containing the summons and complaint failed to accomplish the required personal service. *DOT v. Marks*, 219 Ga. App. 738, 466 S.E.2d 273 (1995).

Effect of motor vehicle liability insurance. — Department of Transportation, as a state agency, does not come within the ambit of O.C.G.A. § 33-24-51(b), which provides for waiver of governmental immunity to the extent of the amount of motor vehicle liability insurance purchased by "a municipal corporation, a county, or any other political subdivision of this state...." *Huggins v. Georgia Dep't of Transp.*, 165 Ga. App. 178, 300 S.E.2d 195 (1983).

Not all actions *ex contractu* are authorized. — Fact that an action *ex contractu* is a correct procedural form by which to assert a constitutionally authorized action against the Department of Transportation does not permit an inference that all actions *ex contractu* are thus authorized. *National Distrib. Co. v. Department of Transp.*, 157 Ga. App. 789, 278 S.E.2d 648, *aff'd*, 248 Ga. 451, 283 S.E.2d 470 (1981).

Who may sue and be sued in permitted actions. — Department of Transportation, consisting of the State Transportation Board, the commissioner of transportation, the deputy commissioner of transportation, the state highway engineer, the treasurer and the assistant treasurer of transportation, and such subordinate employees as may be deemed necessary by the commissioner, may sue and be sued in such actions as are permitted by law. *National Distrib. Co. v. Department of Transp.*, 157 Ga. App. 789, 278 S.E.2d 648, *aff'd*, 248 Ga. 451, 283 S.E.2d 470 (1981).

State department as joint tortfeasor. — State department or agency can be considered a joint tortfeasor with other resident defendants for venue purposes. *Gault v. National Union Fire Ins. Co.*, 208 Ga. App. 134, 430 S.E.2d 63 (1993).

Venue against an employee of the DOT may be had in a county only if the employee is an alleged joint tortfeasor with a defendant resident in that county. *Gault v. National Union Fire Ins. Co.*, 208

Actions Against Department (Cont'd)

Ga. App. 134, 430 S.E.2d 63 (1993).

Section is venue statute only. — An action wherein grantors sought to recover against the Department of Transportation for alleged breach of conditions contained in an agreement delineated a "Soil Easement" could not be maintained under the authority of O.C.G.A. § 32-2-5 which is a venue statute only. *National Distrib. Co. v. Department of Transp.*, 157 Ga. App. 789, 278 S.E.2d 648, aff'd, 248 Ga. 451, 283 S.E.2d 470 (1981).

Special venue statutes cumulative of other venue statutes. — It appears that there is no authority that special venue statutes are exclusive and the inference in the cases is that the special venue statutes are cumulative of other venue statutes. *Jahncke Serv., Inc. v. Department of Transp.*, 134 Ga. App. 106, 213 S.E.2d 150 (1975).

Venue of action against department and joint tortfeasor. — In an action by a landowner against the Department of Transportation (DOT) and a corporation for abatement of a nuisance, the county in which the cause of action against DOT arose was the residence of DOT for purposes of the action; this allowed the corporation, as a resident joint tortfeasor, to be joined, even though the corporation resided in a separate county. *C.W. Matthews Contracting Co. v. Barnett*, 219 Ga. App. 763, 466 S.E.2d 657 (1996).

State's Capacity to Sue

Authority to sue. — State has complete power over the state's internal highway system, including bridges, and in the state's corporate capacity as sovereign may sue for any injury or interference with the state's highway system. *State Hwy. Dep't v. Florence*, 73 Ga. App. 852, 38 S.E.2d 628 (1946) (decided under former Code 1933, §§ 95-1701, 95-1709, 95-1720).

Legislative intent to let Department of Transportation protect state's interests. — General Assembly intended to confer upon the State Highway Department (now Department of Transportation), as one of the state's public agencies, not only the duty of con-

structing, maintaining, and repairing the highways and bridges of the state-aid system of roads, but also to confer on the Highway Department (now Department of Transportation) the right to protect the state's interest in matters growing out of the maintenance of the state's state-aid system of roads. *State Hwy. Dep't v. Florence*, 73 Ga. App. 852, 38 S.E.2d 628 (1946) (decided under former Code 1933, §§ 95-1701, 95-1709, 95-1720).

Legislative intent illustrated by giving Department of Transportation right to sue. — State has delegated the right to sue to the State Highway Department (now Department of Transportation), which is financially responsible for the state-aid road system. *State Hwy. Dep't v. Florence*, 73 Ga. App. 852, 38 S.E.2d 628 (1946) (decided under former Code 1933, §§ 95-1701, 95-1709, 95-1720).

Department as bailee for damaged bridge. — State Highway Department (now Department of Transportation) was holding a bridge, as part of the state-aid system of roads under the department's jurisdiction, in trust for the use of the public and with the duty to replace the bridge; and, in this capacity considered as a bailee, the department may bring an action for the allegedly negligent destruction of the bridge. *State Hwy. Dep't v. Florence*, 73 Ga. App. 852, 38 S.E.2d 628 (1946) (decided under former Code 1933, §§ 95-1701, 95-1709, 95-1720).

Use of damages to restore destroyed bridge. — Logical disposition of any money recovered in an action for the destruction of a bridge on a public highway which is to continue in use would be to use the money for the purpose of restoring the destroyed bridge, or where the bridge has already been rebuilt, to use the money to replace, as nearly as possible, those funds which the Highway Department (now Department of Transportation) expended in restoring the bridge. *State Hwy. Dep't v. Florence*, 73 Ga. App. 852, 38 S.E.2d 628 (1946) (decided under former Code 1933, §§ 95-1701, 95-1709, 95-1720).

State's Liability to Suit

Effect of department's acts. — Acts of Department of Transportation are the

acts of the State of Georgia and the state performs a governmental function when the state constructs and maintains highways through the Department of Transportation. *State Hwy. Dep't v. Parker*, 75 Ga. App. 237, 43 S.E.2d 172 (1947) (decided under former Code 1933, § 95-1710).

Extent of Department's powers. — State Highway Department (now Department of Transportation) has no power and no function except those expressly authorized by the state. *State Hwy. Dep't v. Parker*, 75 Ga. App. 237, 43 S.E.2d 172 (1947) (decided under former Code 1933, § 95-1710).

Department not suable without state consent. — Department of Transportation is a part of the sovereign state, an agent or servant of the state, and the department cannot be sued without the express consent of the sovereign. *State Hwy. Dep't v. Parker*, 75 Ga. App. 237, 43 S.E.2d 172 (1947) (decided under former Code 1933, § 95-1710).

State consent given only in limited situations. — Department of Transportation is authorized by the state to sue and to be sued, but the power to sue and to be sued in the case of the department is only for special purposes. *State Hwy. Dep't v. Parker*, 75 Ga. App. 237, 43 S.E.2d 172 (1947) (decided under former Code 1933, § 95-1710).

Situations in which county originally liable. — This section refers to claims for damages against a county

which must have originated under laws existing when the highway is taken over as a state-aid road by the State Highway Department (now Department of Transportation), and when the department "ultimately may be liable," not primarily liable. *Tounsel v. State Hwy. Dep't*, 180 Ga. 112, 178 S.E. 285, answer conformed to, 50 Ga. App. 520, 179 S.E. 167 (1935) (decided under former Code 1933, § 95-1710).

No consent for suits for personal injuries. — Right to "make settlement of all claims presented to it under oath," certainly does not include the right to sue the State Highway Department (now Department of Transportation) for damages for personal injuries due to negligence of the department's engineers, but refers to such matters as are expressly provided in statute. *Tounsel v. State Hwy. Dep't*, 180 Ga. 112, 178 S.E. 285, answer conformed to, 50 Ga. App. 520, 179 S.E. 167 (1935) (decided under former Code 1933, § 95-1710).

Consent for suits for personal injuries given where employee sues for workers' compensation. — An employee of the Department of Transportation has a right to bring an action directly against the department under the workers' compensation law for compensation for an injury arising out of and during the course of employment by the department. *State Hwy. Dep't v. Parker*, 75 Ga. App. 237, 43 S.E.2d 172 (1947) (decided under former Code 1933, § 95-1710).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former law are included in the annotations of this Code section.

Necessity for retaining highway project file for 20-year period. — It is necessary to retain an entire highway project file for a 20-year period; retaining

the release, final voucher, and contract for this period will not adequately protect the state's interest in compliance with state law because highway construction contracts are sealed contracts and are therefore subject to a 20-year statute of limitations. 1973 Op. Att'y Gen. No. 73-89 (decided under former law).

RESEARCH REFERENCES

ALR. — Right of private citizen to complain of re-routing of highway or removal or change of route or directional signs, 97 ALR 192.

Liability and suability, in negligence action, of state highway, toll road, or turnpike authority, 62 ALR2d 1222.

Liability, in motor vehicle-related cases,

of governmental entity for injury or death Measure and elements of damages for
 resulting from ice or snow on surface of injury to bridge, 31 ALR5th 171.
 highway or street, 97 ALR3d 11.

32-2-6. Liability of department for actions against counties; procedure to institute actions.

(a) The department shall defend any action and be responsible for all damages awarded therein in any court of this state against any county under existing laws whenever the cause of action accrues on a public road which at the time of accrual had been designated by the department as a part of the state highway system; provided, however, that no action may be brought under this Code section until the construction of the public road on which the injury complained of occurred has been completed and such public road has been officially opened to traffic as provided in subsection (b) of this Code section. When any such action is brought against a county in any court of this state, it shall be the duty of the plaintiff to provide for service of notice of the pendency of such action against the county upon the department by providing for service of a second original process, issued from the court where the action is filed, upon the commissioner personally or by leaving a copy of the same in the office of the commissioner in the Department of Transportation Building, Atlanta, Georgia. The service of process in such action upon the county shall not be perfected until such second original process has been served as provided in this Code section. The department shall also have the right and authority to defend, adjust, and settle in the name of such county and on its behalf any claim for damages for which the department ultimately may be liable under this Code section.

(b) A public road shall be officially opened to traffic within the meaning of this Code section on the date that the department gives written notice of final acceptance of such work to the contractor or political subdivision performing the work on such road or otherwise in writing acts so as to open the road to traffic by the general public. (Code 1933, § 95A-305, enacted by Ga. L. 1973, p. 947, § 1.)

Law reviews. — For article surveying developments in Georgia local government law from mid-1980 through mid-1981, see 33 Mercer L. Rev. 187 (1981). For article surveying developments in Georgia torts law from mid-1980 through mid-1981, see 33 Mercer L. Rev. 247 (1981).

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION
 JOINT STATE-COUNTY SUITS
 STATE LIABILITY
 LIMITS ON STATE LIABILITY
 COUNTY LIABILITY
 LIABILITY OF OTHER PARTIES

General Consideration

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, §§ 95-1505, 95-1710, and 95-1712, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section.

County's immunity from liability not waived. — This section specifically limits responsibility to those damages awarded against any county "under existing laws" and is not a waiver of the county's immunity from liability. *Williams v. Georgia Power Co.*, 233 Ga. 517, 212 S.E.2d 348 (1975) (see O.C.G.A. § 32-2-6).

No sovereign immunity from inverse condemnation action. — O.C.G.A. § 32-2-6 applies only to actions when sovereign immunity exists and must be statutorily waived. No sovereign immunity exists when a cause of action for inverse condemnation lies because the Constitution itself affords the right. *Powell v. Ledbetter Bros.*, 251 Ga. 649, 307 S.E.2d 663 (1983), overruled in part on other grounds, *David Allen Co. v. Benton*, 260 Ga. 557, 398 S.E.2d 191 (1990).

Cited in *Evans County v. McDonald*, 133 Ga. App. 955, 213 S.E.2d 82 (1975); *Counihan v. Department of Transp.*, 162 Ga. App. 374, 290 S.E.2d 514 (1982).

Joint State-County Suits

County need not be plaintiff in suit by board. — When the State Highway Board (now State Transportation Board) brings an action for declaratory judgment there is no statute which requires that the county where the subject matter of the suit is located be named a party plaintiff in the case. *Woodside v. State Hwy. Dep't*, 216 Ga. 254, 115 S.E.2d 560 (1960) (decided under former Code 1933, § 95-1710).

County could "vouch" in the Department of Transportation in an action brought against the county for personal injuries and wrongful death arising out of a collision at a highway intersection. *DOT v. Land*, 181 Ga. App. 94, 351 S.E.2d 470 (1986), aff'd except as to that part of the opinion affirming the trial

court's dismissal of the Department of Transportation as a named party, 257 Ga. 657, 362 S.E.2d 372 (1987); and vacated insofar as it is inconsistent, 185 Ga. App. 630, 366 S.E.2d 242 (1988).

County not proper party when suit lies against Department of Transportation. — O.C.G.A. § 32-2-6 does not make the county in which roads and bridges are located a proper and necessary party by operation of law when suit lies against the Department of Transportation. The section requires suit be brought against the county and the Department of Transportation shall defend, not vice versa. *Powell v. Ledbetter Bros.*, 251 Ga. 649, 307 S.E.2d 663 (1983), overruled in part on other grounds, *David Allen Co. v. Benton*, 260 Ga. 557, 398 S.E.2d 191 (1990).

State Liability

Department defends suits originating on state highways. — State Highway Department (now Department of Transportation) shall defend all suits and be responsible for all damages awarded against any county whenever the cause of action originates on highways, jurisdiction over which has been assumed by the department under the terms of the law. *Berrien County v. Vickers*, 73 Ga. App. 863, 38 S.E.2d 619 (1946) (decided under former Code 1933, § 95-1710).

Department defends suits after highway has been opened. — Language of this section is confined to suits brought against the county for causes of action originating on highways, placing ultimate liability upon the Department of Transportation which is to be made a defendant in such actions, and prohibiting the bringing of such actions until the highway is opened to traffic by the department. *Fulton County v. Woodside*, 223 Ga. 316, 155 S.E.2d 404 (1967) (decided under former Code 1933, §§ 95-1710, 95-1712).

Department defends suits even when plaintiff sold land before highway opened. — While the authority of the property owner to institute a suit against a county for damages to property arising from construction of a state-aid road by the Highway Department (now Department of Transportation) is re-

State Liability (Cont'd)

stricted until the state-aid road involved is completed and opened to traffic; the fact that the property owner has divested oneself of title to the property allegedly damaged before the state-aid road involved had been formally opened to traffic and the cause of action had thereby accrued does not defeat the owner's cause of action. *Dougherty County v. Pylant*, 104 Ga. App. 468, 122 S.E.2d 117 (1961) (decided under former Code 1933, § 95-1712).

Department as defendant in claim against its insured employees. — When a claim is covered to the extent of insurance provided to employees of the Department of Transportation (DOT), and the employees are named as defendants in the complaint, it is proper to name DOT as a party defendant, even though DOT carries no liability insurance as to such actions. *DOT v. Land*, 257 Ga. 657, 362 S.E.2d 372 (1987).

Limits on State Liability

Department's acts are acts of the State of Georgia, and the state, in the construction and maintenance of highways through the Department of Transportation, performs a governmental function. *State Hwy. Dep't v. Parker*, 75 Ga. App. 237, 43 S.E.2d 172 (1947) (decided under former Code 1933, §§ 95-1505, 95-1710).

Department cannot be sued without state consent. — Department of Transportation is a part of the sovereign state, an agent or servant of the state, and the department cannot be sued without the express consent of the sovereign. *State Hwy. Dep't v. Parker*, 75 Ga. App. 237, 43 S.E.2d 172 (1947) (decided under former Code 1933, §§ 95-1505, 95-1710).

Department may sue or be sued for only limited purposes. — Highway Department (now Department of Transportation) has no powers and no functions except those expressly authorized by the state; although the Department of Transportation is authorized by the state to sue and to be sued, the power to sue and to be sued in the case of the department is only for special purposes. *State Hwy. Dep't v. Parker*, 75 Ga. App. 237, 43 S.E.2d 172

(1947) (decided under former Code 1933, §§ 95-1505, 95-1710).

Negligent severance of building and negligent relocation of trunk sewer. — State Highway Department (now Department of Transportation) may be sued for the negligent severance of a building and the negligent relocation of a trunk sewer for the purpose of clearing a right of way for the construction of a state-aid road, which is sufficient to show a cause of action which originates on a highway. *Fulton County v. Woodside*, 223 Ga. 316, 155 S.E.2d 404 (1967) (decided under former Code 1933, §§ 95-1710, 95-1712).

Remedies for damages off highway not actions against department. — Procedure for bringing an action against the Department of Transportation is inapplicable to a case where the injury does not originate on a highway; if there has been an independent taking of private property for public use, the injured party is relegated either to the remedy of injunction or mandamus, when such a remedy is appropriate, or else to an action at law. *State Hwy. Dep't v. Parker*, 75 Ga. App. 237, 43 S.E.2d 172 (1947) (decided under former Code 1933, § 95-1710).

Exception for employee suing department for workers' compensation. — Employee of the Department of Transportation may bring an action directly against the department under the Workers' Compensation Act for an injury arising out of and during the course of employment; this is the sole exception under which the legislature has granted authority for the department to be sued other than the method provided for in statute. *State Hwy. Dep't v. Parker*, 75 Ga. App. 237, 43 S.E.2d 172 (1947) (decided under former Code 1933, §§ 95-1505, 95-1710).

County Liability

No waiver of immunity. — County was not liable because the county had no liability insurance and thus retained the county's sovereign immunity; under O.C.G.A. § 32-2-6, there was nothing which the DOT must have defended or for which DOT must have been responsible for on behalf of the county. *DOT v. Price*, 208 Ga. App. 320, 430 S.E.2d 602 (1993).

Department of Transportation's waiver of DOT's own immunity by the purchase of liability insurance for employees could not have created a "total" or "partial waiver" of the county's immunity. *DOT v. Price*, 208 Ga. App. 320, 430 S.E.2d 602 (1993).

No liability for county. — When there is no liability for the county, the mechanism for holding the DOT responsible for damages under O.C.G.A. § 32-2-6 does not create such liability. *Christian v. Monroe County*, 203 Ga. App. 342, 417 S.E.2d 37 (1992).

Where damage off highway. — When the department takes rock from land not on a highway, and uses the rock in the construction of a road, the owner's cause of action does not originate on a highway, and the owner's remedy is an action against the board in the county of the residence of a member at the time the suit is brought. *State Hwy. Dep't v. Parker*, 75 Ga. App. 237, 43 S.E.2d 172 (1947) (decided under former Code 1933, § 95-1710).

Liability of Other Parties

Section not applicable to other defendants. — Provisions of this section do

not include common-law tort actions against parties other than a county and the Department of Transportation simply because the alleged negligent act "originated on a highway." *Fulton County v. Woodside*, 223 Ga. 316, 155 S.E.2d 404 (1967) (decided under former Code 1933, §§ 95-1710, 95-1712).

Actions against contractors. — Proceeding against a private contractor although based upon a cause of action "originating on a highway" could be maintained without adherence to the provisions of this section. *Fulton County v. Woodside*, 223 Ga. 316, 155 S.E.2d 404 (1967) (decided under former Code 1933, §§ 95-1710, 95-1712).

Section on necessary parties not applicable to declaratory judgments.

— When the suit was for a declaratory judgment and was not brought under former Code 1933, § 95-1710, a provision of that statute relating to necessary parties was inapplicable to the case made by the petition. *Woodside v. State Hwy. Dep't*, 216 Ga. 254, 115 S.E.2d 560 (1960) (decided under former Code 1933, § 95-1710).

RESEARCH REFERENCES

ALR. — Liability, in motor vehicle-related cases, of governmental entity for injury or death resulting from

design, construction, or failure to warn of narrow bridge, 2 ALR4th 635.

32-2-7. Compensation for employees injured in line of duty.

(a) As used in this Code section, the term "external violence, accident, or injury" means any act of violence, an accident, or an injury that is caused by a person other than:

(1) One who is an employee of the department; or

(2) One who is an employee of a contractor or subcontractor performing duties under a contract with the department.

(b) Any employee of the department who, on or after July 1, 1987, is injured in the line of duty by an act of external violence, accident, or injury shall be entitled to receive compensation as provided in this Code section. Going to and from work shall not be considered in the line of duty. For the purposes of this Code section, "line of duty" means working in the proximity of traffic movements or equipment movements

doing maintenance, construction, or other activities which may be construed as hazardous.

(c) An employee injured in the line of duty as provided in subsection (b) of this Code section shall continue to receive his regular compensation for the period of time that the employee is physically unable to perform the duties of his employment; provided, however, that such benefits provided in this Code section shall not be granted for injuries resulting from a single incident for more than a total of 180 working days. An employee shall be required to submit to his department head satisfactory evidence of such disability.

(d) Benefits made available under this Code section shall be subordinate to any workers' compensation benefits for which the employee is eligible and shall be limited to the difference between the amount of available workers' compensation benefits and the amount of the employee's regular compensation. (Code 1981, § 32-2-7, enacted by Ga. L. 1987, p. 390, § 1.)

32-2-8. Department to fly POW-MIA flag at interstate rest areas.

The Department of Transportation shall fly the POW-MIA flag year-round at each of the rest areas along interstate highways in this state. The department is authorized to place a plaque at each rest area to indicate Georgia's appreciation of the sacrifices of prisoners of war and those missing in action and their families. (Code 1981, § 32-2-8, enacted by Ga. L. 2001, p. 485, § 1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2001, "year-round" was substituted for "year round" in the first sentence.

ARTICLE 2

STATE TRANSPORTATION BOARD

Editor's notes. — Ga. L. 2001, p. 1215, § 2, not codified by the General Assembly, provides that: "No state agency shall name or rename any state road, bridge, interchange, or any part of a road in honor of, or with the name of, any person unless such action is approved by a joint resolution or Act of the General Assembly which is approved by the Governor or becomes law without such approval. This Code section shall not apply to a political sub-

division of the state naming any road which is under the jurisdiction of such political subdivision."

Ga. L. 2006, p. 72, § 32A/SB 465, not codified by the General Assembly, provided for the repeal of Ga. L. 2001, p. 1215, § 2, which section has been codified as and superceded by Code Section 32-4-3, relating to naming state roads, bridges, or interchanges, and which Code section shall remain effective.

32-2-20. Composition of board; qualifications of members; terms of office; manner of selection of members; filling of vacancies; officers; meetings; compensation of members.

(a) The State Transportation Board shall be composed of one member to be chosen from each congressional district of the state in the manner provided in subsection (b) of this Code section. Each member of the board shall be a resident of the congressional district which he or she represents. In the event any person who is an officer, agent, official, or employee of the state or of any county, municipality, or other political subdivision thereof or who is a member of the General Assembly is appointed or elected as a member of the board, such person must resign as such officer, agent, official, employee, or member prior to taking office as a member of the board.

(b) Each member shall be elected to serve for a term of five years and until his or her successor is duly elected and certified. The member of the board from each congressional district shall be elected by a majority vote of the members of the House of Representatives and Senate whose respective districts are embraced or partly embraced within such congressional district, meeting in caucus at the regular session of the General Assembly immediately preceding the expiration of the term of office of each such board member. Said caucus shall be called at the state capitol by the Speaker of the House of Representatives and the President of the Senate within the first ten days of the convening of the General Assembly in regular session by mailing to the members of the General Assembly who are affected written notice at least four days before the caucus, which notice shall state the time, place, and purpose of said caucus. Within 15 days after each such election, the Speaker of the House and the President of the Senate shall jointly transmit a certificate of such election to the Secretary of State who, upon receipt thereof, shall immediately issue his or her commission thereon, with the great seal of the state affixed thereto. Any member of the board shall be subject to recall at any time by a majority vote of the legislative caucus that elected the member.

(c) In the event that any vacancy for any cause shall occur in the membership of the board during any regular session of the General Assembly, the remainder of the unexpired term shall be filled by a member elected by a majority vote of those members of the General Assembly whose respective districts are embraced or partly embraced within the congressional district where the vacancy occurred, in the same manner as provided in subsection (b) of this Code section for the election of board members. In the event that any vacancy for any cause shall occur in the membership of the board while the General Assembly is not in session, the remainder of the unexpired term shall be filled by

a member elected by a majority vote of those members of the General Assembly whose respective districts are embraced or partly embraced within the congressional district where the vacancy occurred, at a meeting which shall be called by the Speaker of the House of Representatives and the President of the Senate at some convenient location and in the manner provided in subsection (b) of this Code section for the election of board members.

(d) The board shall, by majority vote of those members present and voting at regular sessions, elect from their number a chairman and vice-chairman who shall serve at the pleasure of the board. In like manner, the board shall also elect a secretary, who need not necessarily be a member of the board, and who shall also serve at the pleasure of the board.

(e) The board shall meet in regular session at least one day each month, at least nine of which regular sessions are to be held at the headquarters of the Department of Transportation in Atlanta, and at such other special meetings as may be called by the commissioner, by the chairman, or by a majority of the members of the board upon reasonable written notice to all members of the board. Further, the chairman of the board or the commissioner is authorized from time to time to call meetings of committees of the board which are established by board policy; and to require the attendance of a member or members of the board at places inside or outside the state when, in the opinion of the chairman or the commissioner, the member or members of the board are needed to attend properly to the department's business. A majority of the board shall constitute a quorum for the transaction of all business including election or removal of the commissioner. Except as otherwise provided in this title, any power of the board may be exercised by a majority vote of those members present at any meeting at which there is a quorum.

(f) The members of the board shall receive no salary but shall receive for each day of actual attendance at meetings of the board and the committee meetings the per diem and transportation costs prescribed in Code Section 45-7-21. A like sum shall be paid for each day actually spent in studying the transportation needs of the state or attending other functions as a representative of the board, not to exceed 60 days in any calendar year. No per diem shall be paid for meetings of the board conducted by conference call. In addition, they shall receive actual transportation costs while traveling by public carrier or the legal mileage rate for the use of a personal automobile in connection with such attendance and road study. Such per diem and expense shall be paid from funds appropriated to the department upon presentation, by members of the board, of vouchers approved by the chairperson and signed by the secretary. (Ga. L. 1919, p. 242, art. 3, § 2; Ga. L. 1921, p.

199, §§ 6, 7; Code 1933, §§ 95-1601, 95-1602, 95-1603, 95-1605; Ga. L. 1950, p. 62, § 4; Ga. L. 1951, p. 31, § 1; Ga. L. 1958, p. 624, § 1; Ga. L. 1963, p. 3, § 1; Ga. L. 1963, p. 282, § 1; Ga. L. 1967, p. 151, § 1; Ga. L. 1968, p. 1055, § 1; Code 1933, § 95A-306, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1974, p. 1422, § 11; Ga. L. 1975, p. 833, § 1; Ga. L. 1990, p. 296, § 1; Ga. L. 1995, p. 1041, § 1; Ga. L. 1996, p. 6, § 32; Ga. L. 2009, p. 976, § 2/SB 200; Ga. L. 2010, p. 818, § 1/SB 520; Ga. L. 2011, p. 752, § 32/HB 142.)

The 2010 amendment, effective June 3, 2010, in subsection (b), inserted “or her” in the first sentence and in the next-to-last sentence, and added the last sentence.

The 2011 amendment, effective May

13, 2011, part of an Act to revise, modernize, and correct the Code, inserted “or she” in the second sentence of subsection (a).

Cross references. — State Transportation Board, Ga. Const. 1983, Art. IV, Sec. IV. Legal mileage rate, § 50-19-7.

JUDICIAL DECISIONS

No action for unlawful appropriation. — Without constitutional or statutory authorization, no action lies directly and primarily against the State Highway Board (now State Transportation Board)

for unlawful appropriation of private property for road construction purposes. *Edmonds v. State Hwy. Bd.*, 37 Ga. App. 812, 142 S.E. 214 (1928).

OPINIONS OF THE ATTORNEY GENERAL

Section 21-2-4.1 applicable to State Transportation Board. — O.C.G.A. § 21-2-4.1 applies to whatever appointments must be made to the State Transportation Board as a result of congressional redistricting. 1992 Op. Att’y Gen. No. 92-9.

Lapse of appropriations that become deobligated. — Appropriated state funds which become deobligated during a subsequent fiscal year are subject to lapse and may not be applied to contracts for which motor fuel tax appro-

priations were previously committed. 1993 Op. Att’y Gen. No. 93-9.

Expenses for attendance at out-of-state meetings. — Members of the State Transportation Board of Georgia are entitled to receive, as the daily expense allowance allocated to the members by O.C.G.A. § 45-7-21, their actual expenses for attendance at board and committee meetings which are held out-of-state. 1994 Op. Att’y Gen. No. 94-24.

RESEARCH REFERENCES

C.J.S. — 39A C.J.S., Highways, § 145 et seq.

32-2-21. Powers and duties of board generally.

The board shall be charged with the general control and supervision of the department. In the exercise of such general control and supervision, the board shall have such duties, powers, and authority as are expressly vested in it by this title, including but not limited to:

- (1) Designation of public roads on the state highway system;
- (2) Approval of negotiated construction contracts, of authority lease agreements, or of the advertising of nonnegotiated construction contracts; and
- (3) Approval of all long-range plans and programs of the department. (Ga. L. 1925, p. 208, § 3; Code 1933, § 95-1606; Ga. L. 1950, p. 62, § 6; Code 1933, § 95A-307, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1994, p. 591, § 2; Ga. L. 2009, p. 976, § 3/SB 200.)

Cross references. — State Transportation Board, Ga. Const. 1983, Art. IV, Sec. IV.

JUDICIAL DECISIONS

Voluntary dismissal of claims with prejudice was not a contract and, thus, O.C.G.A. §§ 23-2-20 and 32-2-21 did not apply to authorize setting aside of the dismissal. *Kent v. State Farm Mut. Auto. Ins. Co.*, 233 Ga. App. 564, 504 S.E.2d 710 (1998).

Cited in *Outdoor Adv. Ass'n v. DOT*, 186 Ga. App. 550, 367 S.E.2d 827 (1988).

OPINIONS OF THE ATTORNEY GENERAL

Lapse of appropriations that become deobligated. — Appropriated state funds which become deobligated during a subsequent fiscal year are subject to lapse and may not be applied to contracts for which motor fuel tax appropriations were previously committed. 1993 Op. Att'y Gen. No. 93-9.

32-2-22. Definitions; responsibilities of director and Planning Division; approval of program and plan.

(a) As used in this chapter and in Article 2 of Chapter 5 of this title, the term:

(1) "Director" means the director of planning provided for by Code Section 32-2-43.

(2) "Division" means the Planning Division of the department provided for by paragraph (4) of subsection (b) of Code Section 32-2-41.

(3) "Metropolitan planning organization" means the forum for cooperative transportation decision making for a metropolitan planning area.

(4) "Metropolitan transportation plan" means the official intermodal transportation plan that is developed and adopted through the metropolitan transportation planning process for a metropolitan planning area.

(5) "Nonmetropolitan area" means a geographic area outside the designated metropolitan planning areas.

(6) "State-wide strategic transportation plan" means the official, intermodal, comprehensive, fiscally constrained transportation plan which includes projects, programs, and other activities to support implementation of the state's strategic transportation goals and policies. This plan and the process for developing the plan shall comply with 23 C.F.R. Section 450.104.

(7) "State-wide transportation improvement program" means a state-wide prioritized listing of transportation projects covering a period of four years that is consistent with the state-wide strategic transportation plan, metropolitan transportation plans, and transportation improvement programs and required for multi-modal projects to be eligible for funding under Title 23 U.S.C. and Title 49 U.S.C. Chapter 53.

(8) "Transportation improvement program" means a prioritized listing of transportation projects covering a period of four years that is developed and formally adopted by a metropolitan planning organization as part of the metropolitan transportation planning process, consistent with the metropolitan transportation plan, and required for projects to be eligible for funding under Title 23 U.S.C. and Title 49 U.S.C. Chapter 53.

(b) The director and the division shall:

(1) Review and make recommendations to the Governor concerning all proposed regional land transportation plans and transportation improvement programs and negotiate with the propounder of the plans concerning changes or amendments which may be recommended by the department or the Governor, consistent with applicable federal law and regulation;

(2) Review any transportation projects proposed by the department and adopt, remove, or otherwise include such projects as all or a portion of department plans, consistent with applicable federal law and regulation;

(3) Develop the state-wide strategic transportation plan and the state-wide transportation improvement program and support the various transportation improvement programs;

(4) Develop an annual capital construction project list to be reviewed by the Governor and submitted to the General Assembly for consideration in the budget;

(5) Promulgate rules and regulations necessary to carry out its duties under the provisions of this title. The division shall report the

content of such rules or regulations to the Transportation Committees of the Senate and House of Representatives for their approval by majority vote prior to the promulgation thereof; and

(6) Do all things necessary or convenient to carry out the powers expressly given in this Code section.

(c) After review and approval by the Governor, the state transportation improvement program and the state-wide strategic transportation plan shall be submitted to the State Transportation Board for approval. (Code 1981, § 32-2-22, enacted by Ga. L. 2009, p. 976, § 4/SB 200.)

ARTICLE 3

OFFICERS

32-2-40. Selection of commissioner of transportation; term; vacancy; bond; other elective office.

(a) The commissioner of transportation shall be the chief executive officer of the department.

(b) The commissioner, his successor, and each succeeding commissioner thereafter shall be selected by a vote of the majority of the total number of members of the board. At the time of said vote, the board shall stipulate the term the commissioner shall serve, and said commissioner shall serve during the stipulated term and until his successor is selected by the board and duly qualified. The board shall stipulate one of the following to be the term of the commissioner:

(1) The commissioner shall serve at the pleasure of the board; or

(2) The commissioner shall serve any term specified by the board up to and including a maximum of four years; however, the board shall not specify a term of office that extends beyond the end of the term of the Governor in office at the time the commissioner's term is scheduled to begin.

(c) If the board stipulates that the commissioner shall serve under the provisions of paragraph (2) of this subsection, upon a vote of the majority of the total members of the board, the commissioner shall be subject to removal by the board for just cause after reasonable notice, copy of charge, hearing, and opportunity for presentation of evidence. In the event of a vacancy in the office of the commissioner by reason of resignation, removal, death, or permanent incapacity and inability to perform the duties of the office, the deputy commissioner shall become acting commissioner to serve until such time as the board at any regular or called meeting selects a new commissioner to fill the unexpired term of office created by such vacancy.

(d) The commissioner shall qualify, upon selection, by executing a bond in the amount of \$100,000.00 with a corporate surety licensed to do business in this state and payable to the Governor and his successors in office, such bond to be approved by the Governor and conditioned on the faithful discharge of his duties as commissioner. The premium of such bond shall be paid from funds of the department.

(e) The commissioner shall devote full time and attention to the duties and responsibilities of his office. No person who serves as commissioner shall be eligible, except as hereinafter provided in this subsection, to qualify as a candidate in any primary, special, or general election for any state or federal elective office nor to hold any such office, except as hereinafter provided in this subsection, during the time he serves as commissioner and for a period of 12 months after the date he ceases to serve as commissioner. However, nothing contained in this subsection shall prevent the commissioner from being appointed to any other office nor disqualify him from running in any election to succeed himself in any office to which he was appointed nor to hold such office in the event he is elected thereto and otherwise qualified therefor; provided, however, that the commissioner shall resign as commissioner of transportation before accepting any such appointive office. (Code 1933, § 95A-308, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1983, p. 400, § 1.)

Cross references. — Official bonds generally, T. 45, C. 4.

32-2-41. Powers, duties, and authority of commissioner; establishment of divisions.

(a) As the chief executive officer of the department, the commissioner shall have direct and full control of the department. He or she shall possess, exercise, and perform all the duties, powers, and authority which may be vested in the department by law, except those duties, powers, and authority which are expressly reserved by law to the board or the director of planning. The commissioner's principal responsibility shall be the faithful implementation of transportation plans produced by the director of planning and approved by the Governor and the State Transportation Board, subject to the terms of such appropriations Acts as may be adopted from time to time. The commissioner shall also be responsible for the duties and activities assigned to the commissioner in Article 5 of Chapter 8 of Title 48. When the board is not in regular or called session, the commissioner shall perform, exercise, and possess all duties, powers, and authority of the board except:

- (1) Approval of the advertising of nonnegotiated construction contracts; and
- (2) Approval of authority lease agreements.

The commissioner shall also have the authority to exercise the power of eminent domain and to execute all contracts, authority lease agreements, and all other functions except those that cannot legally be delegated to him or her by the board.

(b)(1) The commissioner shall have the authority to employ, discharge, promote, supervise, and determine the compensation of such personnel as he or she may deem necessary or useful to the effective operation and administration of the department except that the commissioner shall not employ a person who is related within the second degree of consanguinity to the commissioner or any member of the board, provided that such prohibition shall not be applied so as to terminate the employment of persons employed before said prohibited relationship was created by the subsequent election of a board member or appointment of a commissioner.

(2) Notwithstanding the provisions of subsection (b) of Code Section 32-6-29, the commissioner shall have the authority to appoint and employ five nonuniformed investigators who shall be certified peace officers pursuant to the provisions of Chapter 8 of Title 35, the "Georgia Peace Officer Standards and Training Act." The investigators shall have full arrest powers in cases involving internal affairs of the department and in cases involving obstruction of, encroaching on, or injury to public roads or rights of way. In such cases, the investigators shall be authorized:

(A) To investigate Department of Transportation related crimes committed anywhere in the state;

(B) To arrest any person violating the criminal laws of this state;

(C) To serve and execute warrants after notifying the law enforcement agency of the local jurisdiction of the intent to serve such warrant or warrants;

(D) To enforce in general the criminal laws of this state;

(E) To issue citations for civil damage to any person found to be violating the laws, rules, and regulations pertaining to vegetation management; and

(F) To carry firearms while performing their duties but only if such investigators have been certified by the Georgia Peace Officer Standards and Training Council as having successfully completed the course of training required by Chapter 8 of Title 35, the "Georgia Peace Officer Standards and Training Act."

(3) The power granted to the commissioner in paragraph (1) of this subsection shall be subject to and limited by Article 1 of Chapter 20 of Title 45 establishing a merit system for department employees, to

the extent that the same or any amendments thereto are now or may be hereafter applicable to department personnel.

(4) There shall be a Planning Division of the department, directed and staffed by the director of planning, which shall be the department's principal unit for developing the state transportation improvement program and the state-wide strategic transportation plan and coordinating transportation policies, planning, and programs related to design, construction, maintenance, operations, and financing of transportation, under the supervision of the director. The division and the director shall not have jurisdiction over the funds allocated for the local maintenance and improvement grant program pursuant to subsection (d) of Code Section 32-5-27 except as expressly provided by said subsection.

(5) There shall be an Engineering Division of the department to be supervised by the chief engineer, a Finance Division of the department to be supervised by the treasurer, an Administration Division of the department to be supervised by the deputy commissioner, an Intermodal Division to be supervised by an appointee serving at the pleasure of the commissioner, and a Local Grants Division to be supervised by an appointee serving at the pleasure of the commissioner. The duties, responsibilities, and personnel of each such division shall be as established by the commissioner.

(6) The commissioner may establish a Construction Division, an Operations and Maintenance Division, a Permitting Division, and a Public-Private Initiatives Division of the department. The commissioner shall assign to such divisions, except as otherwise provided by law, such personnel and such duties and responsibilities as may be necessary and appropriate for the proper functioning of the department. (Code 1933, § 95A-309, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1974, p. 1422, § 12; Ga. L. 1994, p. 591, § 3; Ga. L. 2004, p. 898, § 1; Ga. L. 2009, p. 976, § 5/SB 200; Ga. L. 2010, p. 396, § 1/SB 305; Ga. L. 2010, p. 778, § 1.1/HB 277; Ga. L. 2010, p. 818, § 2/SB 520.)

The 2010 amendments. — The first 2010 amendment, effective June 2, 2010, added the fourth sentence in the introductory paragraph of subsection (a). The second 2010 amendment, effective June 3, 2010, in paragraph (b)(5), inserted “an Intermodal Division to be supervised by an appointee serving at the pleasure of the commissioner,” near the end of the first sentence. The third 2010 amendment, effective July 1, 2010, made identi-

cal changes to those made by the second 2010 amendment.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1991, “authority lease agreements” was substituted for “authority-lease agreements” in paragraph (a)(2) and in the undesignated language at the end of subsection (a).

Editor's notes. — Ga. L. 2010, p. 778, § 1/HB 277, not codified by the General Assembly, provides: “This Act shall be

known and may be cited as the "Transportation Investment Act of 2010."

Law reviews. — For annual survey of

law on administrative law, see 62 Mercer L. Rev. 1 (2010).

JUDICIAL DECISIONS

Regulation of outdoor advertising.

— Since former paragraph (a)(4) of O.C.G.A. § 32-2-41 expressly forbade the commissioner from exercising the board's power concerning the approval of "long-range plans and programs of the department," and the adoption, amendment, or repeal of departmental rules and

regulations concerning outdoor advertising in Georgia was a long-range program, the commissioner was not empowered to adopt proposed amendments to such rules and regulations sua sponte. *Outdoor Adv. Ass'n v. DOT*, 186 Ga. App. 550, 367 S.E.2d 827, cert. denied, 186 Ga. App. 918, 367 S.E.2d 827 (1988).

32-2-41.1. Progress report and Strategic Transportation Plan.

(a) On or before October 15, 2009, the director shall prepare a report for the Governor, the Lieutenant Governor, the Speaker of the House of Representatives, and the chairpersons of the Senate Transportation Committee and the House Committee on Transportation, respectively, detailing the progress the division has made on preparing a State-wide Strategic Transportation Plan. The director shall deliver a draft of the plan for comments and suggestions by members of the General Assembly and the Governor on or before December 31, 2009. Comments and suggestions by the House and Senate Transportation Committees of the General Assembly and the Governor shall be submitted to the director no later than February 15, 2010. This plan shall include a list of projects realistically expected to begin construction within the next four years, the cost of such projects, and the source of funds for such projects. The plan shall be developed with consideration of investment policies addressing:

- (1) Growth in private-sector employment, development of work force, and improved access to jobs;
- (2) Reduction in traffic congestion;
- (3) Improved efficiency and reliability of commutes in major metropolitan areas;
- (4) Efficiency of freight, cargo, and goods movement;
- (5) Coordination of transportation investment with development patterns in major metropolitan areas;
- (6) Market driven travel demand management;
- (7) Optimized capital asset management;
- (8) Reduction in accidents resulting in injury and loss of life;
- (9) Border-to-border and interregional connectivity; and

(10) Support for local connectivity to the state-wide transportation network.

The investment policies provided for in paragraphs (1) through (10) of this subsection shall also guide the development of the allocation formula provided for under Code Section 32-5-27 and shall expire on April 15, 2012, and every four years thereafter unless amended or renewed. The final version of the State-wide Strategic Transportation Plan shall be completed by April 10, 2010, and shall be delivered to the Governor, the Lieutenant Governor, the Speaker of the House of Representatives, and the chairpersons of the Senate Transportation Committee and the House Committee on Transportation. A report detailing the progress of projects and programs in the State-wide Strategic Transportation Plan shall be prepared and delivered semiannually thereafter, and a revised version shall be prepared and delivered at least biennially thereafter.

(b) The report and plan prepared under subsection (a) of this Code section shall also be published on the website of the department. (Code 1981, § 32-2-41.1, enacted by Ga. L. 2008, p. 528, § 1/HB 1189; Ga. L. 2009, p. 976, § 6/SB 200.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2008, Code Section 32-2-41.1, as enacted by Ga. L. 2008, p. 806, § 1, was redesignated as Code Section 32-2-41.2.

32-2-41.2. Development of benchmarks; reports; value engineering studies.

(a) The commissioner shall develop and publish in print or electronically benchmarks, based upon the type and scope of a construction project, that detail a realistic time frame for completion of each stage of a construction project, including preliminary engineering and design, environmental permitting and review, and right of way acquisition.

(b) The director shall submit a semiannual report to the Governor, the Lieutenant Governor, the Speaker of the House of Representatives, and the chairpersons of the House and Senate Transportation Committees detailing the progress of every construction project valued at \$10 million or more against the benchmarks. This report shall include an analysis explaining the discrepancies between the benchmarks and actual performance on each project as well as an explanation for delays. This report shall also be published on the website of the department.

(c) The department shall create and maintain on its website a detailed status report on each project under planning or construction. This status report shall include, but not be limited to, the name and contact information of the project manager, if applicable.

(d) Value engineering studies shall be performed on all projects whose costs exceed \$10 million, and the director shall submit an annual report to the Governor, the Lieutenant Governor, the Speaker of the House of Representatives, and the chairpersons of the House and Senate Transportation Committees detailing the amount saved due to the value engineering studies. This report shall also be published on the website of the department. (Code 1981, § 32-2-41.2, enacted by Ga. L. 2008, p. 806, § 1/SB 417; Ga. L. 2009, p. 976, § 7/SB 200; Ga. L. 2010, p. 838, § 10/SB 388.)

The 2010 amendment, effective June 3, 2010, inserted “in print or electronically” in subsection (a).

Code Commission notes. — Pursuant

to Code Section 28-9-5, in 2008, Code Section 32-2-41.1, as enacted by Ga. L. 2008, p. 806, § 1, was redesignated as Code Section 32-2-41.2.

32-2-42. Deputy commissioner of transportation; chief engineer; treasurer and assistant treasurer.

(a) The commissioner shall appoint a deputy commissioner of transportation to serve at the pleasure of the commissioner. Before assuming the duties of his or her office, the deputy commissioner shall qualify by giving bond with a corporate surety licensed to do business in this state, such bond to be in the amount of \$500,000.00 and payable to the Governor and his or her successors in office. The bond shall be subject to the approval of the Governor and shall be conditioned on the faithful discharge of the duties of the office, including any duties of the office of the commissioner which the deputy commissioner may be required to perform as acting commissioner. The premium for the bond shall be paid out of the funds of the department. The deputy commissioner shall be the assistant commissioner and shall be empowered to act in his or her own name for the commissioner. The deputy commissioner may exercise to the extent permitted by law only such powers and duties of the commissioner as have been previously assigned to him or her in writing by the commissioner. In the event of the commissioner’s temporary incapacity which causes his or her absence from the offices of the Department of Transportation in Atlanta, Georgia, for 30 consecutive days, the deputy commissioner shall assume all the powers and duties of the commissioner, to be exercised until such time as the commissioner’s temporary absence or incapacity shall cease. In the event of the commissioner’s permanent incapacity, the deputy commissioner shall become acting commissioner, as provided in subsection (c) of Code Section 32-2-40.

(b) The commissioner shall appoint a chief engineer to serve at the pleasure of the commissioner. The chief engineer shall be the chief engineer of the department and shall be a professional engineer registered in accordance with Chapter 15 of Title 43 and who shall be experienced in highway engineering.

(c) The commissioner shall appoint a treasurer of the department to serve at the pleasure of the commissioner. Before assuming the duties of his or her office, the treasurer shall qualify by giving bond with a corporate surety licensed to do business in this state, such bond to be in the amount of \$500,000.00 and payable to the Governor and his or her successors in office. The bond shall be subject to the approval of the Governor and shall be conditioned on the faithful discharge of the duties of the office. The premium for the bond shall be paid out of the funds of the department. The duties of the treasurer shall be to receive all funds from all sources to which the department is entitled, to account for all funds received by the department, to adjust for additional appropriations or balances brought forward from previous years with the prior approval of the Office of Planning and Budget, and to perform such other duties as may be required of him or her by the commissioner. The commissioner shall have the authority to appoint an assistant treasurer in the same manner and under the same conditions as set forth in this subsection for the appointment of the treasurer, including the qualifying in advance by giving bond of the same type, amount, and paid for in the same manner as required of the treasurer. The assistant treasurer shall assume the duties of office of treasurer upon the incapacity or death of the treasurer and shall serve until a new treasurer is appointed as provided in this subsection.

(d) Any provision of this title or of any other statute or of any rule or regulation to the contrary notwithstanding, the commissioner or the deputy commissioner may, in addition to serving as commissioner or deputy commissioner, also simultaneously serve as chief engineer, provided that he or she shall be appointed and shall possess the qualifications as prescribed in subsection (b) of this Code section. A commissioner or deputy commissioner simultaneously serving as chief engineer shall be paid for the discharge of all his or her duties the sum to which he or she is entitled as commissioner or deputy commissioner. (Ga. L. 1925, p. 208, § 2; Code 1933, § 95-1607; Ga. L. 1950, p. 62, § 7; Code 1933, § 95A-310, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1975, p. 102, § 1; Ga. L. 1994, p. 591, § 4; Ga. L. 2009, p. 976, § 8/SB 200; Ga. L. 2011, p. 583, § 2/HB 137.)

The 2011 amendment, effective July 1, 2011, inserted “to adjust for additional appropriations or balances brought forward from previous years with the prior approval of the Office of Planning and

Budget,” in the fifth sentence of subsection (c).

Cross references. — Official bonds generally, T. 45, C. 4, T. 45.

32-2-43. Director of planning; appointment; responsibilities.

(a) There shall be a director of planning appointed by the Governor subject to approval by a majority vote of both the House Transportation Committee and the Senate Transportation Committee. The director

shall serve during the term of the Governor by whom he or she is appointed and at the pleasure of the Governor. If the Governor's term expires and the incoming Governor has not made an appointment, the current director of planning may serve until a replacement is appointed by the incoming Governor and confirmed by the House and Senate Transportation Committees.

(b) The director of planning's principal responsibility shall be the development of transportation plans, including the development of the state-wide strategic transportation plan and state-wide transportation improvement program and other comprehensive plans pursuant to the provisions of Code Section 32-2-3 and Code Section 32-2-22, strategic transportation plans pursuant to the provisions of Code Section 32-2-41.1, and benchmarks and value engineering studies pursuant to the provisions of Code Section 32-2-41.2, in consultation with the board, the Governor, and the commissioner. The director shall also be responsible for the duties and activities assigned to the director in Article 5 of Chapter 8 of Title 48. The director shall be the director of the Planning Division of the department and shall possess, exercise, and perform all the duties, powers, and authority which may be vested in such division by law and are necessary or appropriate for such purpose, except those duties, powers, and authority which are expressly reserved by law to the board or the commissioner. (Code 1981, § 32-2-43, enacted by Ga. L. 2009, p. 976, § 9/SB 200; Ga. L. 2010, p. 778, § 2/HB 277; Ga. L. 2011, p. 583, § 3/HB 137.)

The 2010 amendment, effective June 2, 2010, in subsection (a), inserted "both" and inserted "and the Senate Transportation Committee" in the first sentence; and added the next to last sentence in subsection (b).

The 2011 amendment, effective July 1, 2011, in subsection (a), substituted the present third sentence for the former third through fifth sentences, which read: "Before assuming the duties of his or her office, the director shall qualify by giving bond with a corporate surety licensed to do business in this state, such bond to be in the amount of \$500,000.00 and payable to the Governor and his or her successors

in office. The bond shall be subject to the approval of the Governor and shall be conditioned on the faithful discharge of the duties of the office. The premium for the bond shall be paid out of the funds of the department."

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2009, "the" was deleted following "may be vested in" in the last sentence of subsection (b).

Editor's notes. — Ga. L. 2010, p. 778, § 1/HB 277, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Transportation Investment Act of 2010.'"

ARTICLE 4

EXERCISE OF POWER TO CONTRACT GENERALLY

Cross references. — Applicability of article to airport construction contracts, § 32-2-2(a)(17). State purchasing con-

tracts generally, § 50-5-50 et seq. Applicability of State Properties Code to department, § 50-16-38.

RESEARCH REFERENCES

ALR. — Construction and effect of works or construction contract with state “changed conditions” clause in public or its subdivision, 56 ALR4th 1042.

32-2-60. Authority to contract; form and content of construction contracts; federal-aid highway contracts; bonds.

(a) The department shall have the authority to contract as set forth in this article and in Code Section 32-2-2. All department construction contracts shall be in writing. Any contract entered into by the department for the construction of a public road shall include, as a cost of the project, provisions for sowing vegetation, if appropriate, on all banks, fills, cuts, ditches, and other places where soil erosion is likely to result from the necessary incidents to road work along the right of way of the road project.

(b) Persons, firms, or corporations submitting bids on department construction contracts are required to examine the site of the proposed work and determine for themselves the anticipated subsurface and latent physical conditions at the site prior to submitting a bid on the project. The submission of a bid shall be prima-facie evidence that the bidder has made such examination and is satisfied as to the conditions to be encountered in performing the work. The department does not in any way guarantee the amount or nature of subsurface materials which may be encountered and which must be excavated, graded, or driven through in performing the work on the project. The contractor shall not plead deception or misunderstanding because of variations from quantities of work to be performed or materials to be furnished as shown on the plans or minor variations from the locations or character of the work. Payment will be made only for actual quantities of work performed in accordance with the plans and specifications. The department shall not provide compensation above the amount bid on such project solely due to the encountering of subsurface or latent physical conditions at the site which are different from those anticipated by the bidder.

(c)(1) Notwithstanding the provisions of subsection (b) of this Code section, the department reserves the right to make, at any time during the progress of work, such increases or decreases in quantities and such alterations in the details of construction as necessary or desirable to satisfactorily complete the work. Such increases or decreases shall not invalidate the contract nor release the surety and the contractor agrees to perform the work as altered.

(2) Whenever an alteration materially increases or decreases the scope of the work specified in the contract, a supplemental agreement acceptable to both parties shall be made. In the absence of a

supplemental agreement acceptable to both parties, the department may direct that the work be done either by force account or at existing contract prices. Any force account agreement shall be in writing, specifying the terms of payment signed by the chief engineer, and agreed to in writing by the contractor.

(3) Changes made by the engineer will not be considered to waive any of the provisions of the contract, nor may the contractor make any claim for loss of anticipated profits because of the changes, or by reason of any variation between the approximate quantities and the quantities of work as done.

(d) The provisions of subsections (b) and (c) of this Code section shall be applicable only to federal-aid highway contracts.

(e)(1) When the estimated amount of any department construction contract exceeds \$300 million, performance and payment bonds shall be required in the amount of at least the total amount payable by the terms of the contract unless the department, after public notice, makes a written determination supported by specific findings that single bonds in such amount are not reasonably available, and the board approves such determination in a public meeting. In such event, the estimated value of the construction portion of the contract, excluding right of way acquisition and engineering, shall be guaranteed by a combination of security including, but not limited to, the following:

(A) Payment, performance, surety, cosurety, or excess layer surety bonds;

(B) Letters of credit;

(C) Guarantees of the contractor or its parent companies;

(D) Obligations of the United States and of its agencies and instrumentalities; or

(E) Cash collateral;

provided, however, that the aggregate total guarantee of the project may not use a corporate guarantee of more than 35 percent. The combination of such guarantees shall be determined at the discretion of the department, subject to the approval of the board; provided, however, that such aggregate guarantees shall include not less than \$300 million of performance and payment bonds and shall equal not less than 100 percent of the contractor's obligation under the construction portion of the contract.

(2) Payment guarantees approved pursuant to this subsection shall be deemed to satisfy the requirements of Code Section 13-10-61. Contractors requesting payment under construction contracts guar-

anteed pursuant to this subsection shall provide the following certification under oath with each such request: "All payments due to subcontractors and suppliers from previous payment received under the contract have been made, and timely payments will be made from the proceeds of the payment covered by this certification." (Ga. L. 1965, p. 628, § 1; Code 1933, § 95A-801, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1988, p. 1908, § 1; Ga. L. 1994, p. 591, § 5; Ga. L. 2006, p. 663, § 1/HB 1177; Ga. L. 2007, p. 47, § 32/SB 103.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2006, "limited to, the following:" was substituted for "limited to the following:" near the end of the introductory paragraph (now paragraph (e)(1)) of subsection (e), "Guarantees" was substituted for "Guaranties" in paragraph (e)(3) (now subparagraph (e)(1)(C)), and in paragraph (e)(5) (now subparagraph (e)(1)(E)), "collateral; provided, however," was substituted for "collateral. (6) Provided however" and "percent" was substituted for "%".

Editor's notes. — Ga. L. 1988, p. 1908,

§ 2, not codified by the General Assembly, provides: "The provisions of this Act shall not be applicable to or affect existing contracts in effect on the effective date of this Act." This Act became effective April 14, 1988.

Ga. L. 1988, p. 1908, § 4, not codified by the General Assembly, provides: "No provision of this Act shall prohibit any court of law or equity from reforming a contract or awarding damages based upon a mutual mistake of fact or fraud in the inception of a contract or its performance."

OPINIONS OF THE ATTORNEY GENERAL

Necessity for retaining highway project file for 20-year period. — It is necessary to retain an entire highway project file for a 20-year period; retaining the release, final voucher, and contract for this period will not adequately protect the

state's interests in compliance with state law because highway construction contracts are sealed contracts and are therefore subject to a 20-year statute of limitations. 1973 Op. Att'y Gen. No. 73-89.

32-2-61. Limitations on power to contract.

(a) The department is expressly prohibited from making or contracting any debts or entering into any contract for which it does not have sufficient funds appropriated at the time of making said debt or entering into said contract to enable it to meet such debt or such contract obligation. However, such prohibition shall not apply to contracts entered into pursuant to Article IX, Section III, Paragraph I and Article VII, Section IV, Paragraph IV of the Constitution of Georgia; and the department is expressly authorized to enter into such contracts and to obligate the department in connection therewith. For the purpose of paying obligations imposed by any such contract, such funds as may be appropriated to the department for activities incident to providing and maintaining an adequate system of public roads in the state and the cost incident thereto may be pledged by the department.

(b)(1) The board shall not enter into any lease contract if:

(A) The aggregates of all lease rentals from that and all other such lease contracts including the contract or contracts proposed to be entered into exceed \$19,900,000.00 per annum or 15 percent of the funds appropriated to the department in the fiscal year immediately preceding entering into any such lease rental contract, whichever is greater; or

(B) Such lease contract constitutes security for bonds or other obligations issued by the lessor.

(2) The execution of any lease contract is prohibited until the General Assembly has specifically provided funds in an appropriations Act for the payment of at least one year's rental under such contract.

(c) Except as authorized by Article 3 of Chapter 5 of Title 50, the department is prohibited from entering into any contract for the purchase of supplies, materials, equipment, or services, except those services ancillary to the construction and maintenance of a public road.

(d)(1) The department is prohibited from negotiating any contract for the construction or maintenance of a public road involving the expenditure of \$200,000.00 or more except any contract:

(A) With counties, municipalities, and state agencies, provided that such negotiated contract shall be made at the average bid price of the same kind of work let to contract after advertisement during a period of 60 days prior to the making of the contract;

(B) With a railroad company or utility concerning relocation of its tracks or facilities where the same are not then located on a public road and such relocation is necessary as an incident to the construction or improvement of a public road. However, nothing contained in this subsection shall be construed as requiring the department to furnish a site or right of way for railroad or railway lines or tracks or utility facilities required to be removed from a public road. Furthermore, this subsection shall not prevent the department from assisting in the removal and relocation of publicly owned utilities from locations on public roads as provided in Code Section 32-6-170;

(C) For emergency construction or maintenance involving the expenditure of \$200,000.00 or more when the public interest requires that the work be done without the delay of advertising for public bids;

(D) For the procurement of business, professional, or other services from any person, firm, or corporation as an independent contractor;

(E) With the State Road and Tollway Authority; or

(F) Through the provisions of a design-build contract as provided for in Code Section 32-2-81.

(2) A department contract negotiated and made with a political subdivision, as authorized by subparagraph (A) of paragraph (1) of this subsection, may be subcontracted to any person or political subdivision. It may be performed with inmate labor, except in the case of a public work constructed with federal aid, or the forces of such political subdivision or those of a political subdivision to which such contract has been subcontracted. However, the department shall have the authority to furnish planning, contract plans, specifications, and engineering supervision over a public road being constructed by a political subdivision or by its subcontractor. Any subcontract made under authority of this subsection shall not constitute the basis of any claim against the department, nor shall such subcontract be considered an assignment of the rights of the political subdivision under its contract with the department.

(e) Except for public roads within and leading to state parks, the department is prohibited from maintaining any public road not on the state highway system. Any department contract with a state agency or political subdivision for construction of a public road not then, nor to become upon completion of the contract, part of the state highway system or a road within or leading to a state park shall not relieve the agency or the political subdivision of the responsibility for maintaining such public road as such duty is imposed by this Code section and by Code Sections 32-4-41 and 32-4-91. (Ga. L. 1950, p. 62, § 12; Ga. L. 1951, p. 31, § 3; Ga. L. 1953, Jan.-Feb. Sess., p. 81, § 1; Ga. L. 1955, p. 249, § 1; Ga. L. 1961, p. 22, § 1; Ga. L. 1967, p. 382, § 1; Ga. L. 1968, p. 1055, § 5; Code 1933, § 95A-802, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1974, p. 1422, § 19; Ga. L. 1975, p. 1159, §§ 1-3; Ga. L. 1983, p. 3, § 56; Ga. L. 1989, p. 356, § 1; Ga. L. 1997, p. 699, § 1; Ga. L. 2001, p. 1251, § 1-2; Ga. L. 2004, p. 905, § 1; Ga. L. 2005, p. 117, § 30A/HB 312; Ga. L. 2007, p. 167, § 1/HB 192; Ga. L. 2012, p. 1343, § 1/HB 817.)

The 2012 amendment, effective July 1, 2012, substituted “\$200,000.00” for “\$100,000.00” near the end of introductory language of paragraph (d)(1) and near the middle of subparagraph (d)(1)(C); and substituted “subdivision” for “division” in the last sentence of paragraph (d)(2).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1991, “subparagraph (A) of paragraph (1)” was substituted for “subparagraph (1)(A)” in the first sentence of paragraph (d)(2).

JUDICIAL DECISIONS

Effect of transfer of state road. — Department of Transportation is prohibited from maintaining a road after the road is transferred from the state highway

system and the department owed no duty to plaintiff who was injured in an accident on the road. *Georgia DOT v. Smith*, 210 Ga. App. 741, 437 S.E.2d 811 (1993).

When an injured party sued the Georgia Department of Transportation (DOT) for injuries received in a single-car accident on a county road, the party could not maintain a negligent maintenance claim against DOT because the road on which the accident occurred was not part of the state highway system, nor did the road

lead to a state park; thus, under O.C.G.A. § 32-4-41(1), the county was obligated to maintain the road and, under O.C.G.A. § 32-2-61(e), DOT's contract with the county to improve the road did not relieve the county of this responsibility. *Ogles v. E.A. Mann & Co.*, 277 Ga. App. 22, 625 S.E.2d 425 (2005).

Cited in *DOT v. Carr*, 254 Ga. App. 781, 564 S.E.2d 14 (2002); *Barrett v. Ga. DOT*, 304 Ga. App. 667, 697 S.E.2d 217 (2010).

OPINIONS OF THE ATTORNEY GENERAL

Department of Transportation may enter into transportation construction contracts with financial backing from State Road and Tollway Authority. — Department of Transportation may enter into transportation construction contracts with all or a portion of the

financial backing for the contracts coming from a contractual promise from the State Road and Tollway Authority to borrow and provide money to DOT as and when needed to expend on projects that are the subjects of the construction contracts. 2001 Op. Att'y Gen. No. 2001-10.

RESEARCH REFERENCES

ALR. — Contract for personal services as within requirement of submission of bids as condition of public contract, 15 ALR3d 733.

32-2-62. Approval by board of advertising of nonnegotiated construction contracts; factors to be considered by board.

The advertising of all nonnegotiated department construction contracts shall have the prior approval of the board. When the board is not in session, the commissioner may approve negotiated construction contracts. In determining public roads most in need of work and also the type, class, width, location, and order of priority of each project, the board shall take into consideration such factors as the use of the public road in question; the present need and anticipated development of the area traversed by it; whether or not it is a school bus or mail route; and its use for agricultural or industrial purposes. The board shall also take into consideration the information disclosed by the records required by Code Section 32-4-2 to be maintained by the department. (Code 1933, § 95A-803, enacted by Ga. L. 1973, p. 947, § 1.)

32-2-63. Authority of commissioner to execute contracts and authority lease agreements.

The commissioner shall have full authority to execute contracts and authority lease agreements on behalf of the department whenever such

contracts or agreements have been approved in accordance with this title. (Code 1933, § 95A-804, enacted by Ga. L. 1973, p. 947, § 1.)

32-2-64. Required letting of contracts by public bid; posting bid on department website sufficient.

Except as authorized by subsection (d) of Code Section 32-2-61, all department construction and maintenance contracts shall be let by public bid. For purposes of this Code section, posting a bid on the department's website shall satisfy the public bid requirement. (Ga. L. 1949, p. 372, § 2; Code 1933, § 95A-805, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 2012, p. 1343, § 2/HB 817.)

The 2012 amendment, effective July 1, 2012, added the second sentence.

Cross references. — Letting of con-

tracts by Department of Administrative Services by public bid, § 50-5-67.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under Ga. L. 1950, p. 62, as amended, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section.

Judicial notice that construction be done by independent contractor not required. — In a suit by a property

owner for damage to property caused by highway construction, the requirement that competitive bids be taken on highway maintenance and construction contracts does not require the court to take judicial notice of the fact that the construction was done by an independent contractor. *Richmond County v. Williams*, 109 Ga. App. 670, 137 S.E.2d 343 (1964) (decided under former Ga. L. 1950, p. 62, as amended).

RESEARCH REFERENCES

ALR. — Contract for personal services as within requirement of submission of bids as condition of public contract, 15 ALR3d 733.

Authority of state, municipality, or other governmental entity to accept late bids for public works contracts, 49 ALR5th 747.

32-2-65. Advertising for bids.

(a) On all contracts required to be let by public bid, the commissioner shall advertise for competitive bids for at least two weeks; the public advertisement shall be inserted once a week in such newspapers or other publications, or both, as will ensure adequate publicity, the first insertion to be at least two weeks prior to the opening of bids, the second to follow one week after the publication of the first insertion.

(b) Such advertisement shall include but not be limited to the following items:

- (1) A description sufficient to enable the public to know the approximate extent and character of the work to be done;

(2) The time allowed for performance;

(3) The terms and time of payment, including a statement that final payment of amounts withheld or deposited in escrow need not be made until the issuance of the chief engineer's certification of satisfactory completion of work and acceptance thereof, as provided in Code Sections 32-2-75 through 32-2-77;

(4) Where and under what conditions and costs the detailed plans and specifications and proposal forms may be obtained;

(5) The amount of the required proposal guaranty;

(6) The time and place for submission and opening of bids;

(7) The right of the department to reject any one or all bids; and

(8) Such further notice as the department may deem advisable as in the public interest. (Ga. L. 1949, p. 373, § 3; Code 1933, § 95A-806, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1994, p. 591, § 6.)

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under Ga. L. 1950, p. 62, as amended, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section.

Judicial notice that construction be done by independent contractors.

— In a suit by a property owner for

damage to property caused by highway construction, the requirement that competitive bids be taken on highway maintenance and construction contracts does not require the court to take judicial notice of the fact that the construction was done by an independent contractor. *Richmond County v. Williams*, 109 Ga. App. 670, 137 S.E.2d 343 (1964) (decided under former Ga. L. 1950, p. 62, as amended).

OPINIONS OF THE ATTORNEY GENERAL

Letting one-bid projects, limited negotiation with certain bidders, and letting to second-low bidders are now legal under O.C.G.A. § 32-2-69 and can be included in the "advertised specifications," whether that term can be applied

to the standard specifications themselves or whether the three identified circumstances must be specifically referenced in the actual advertisement of the project. 1986 Op. Att'y Gen. No. 86-21.

32-2-66. Prequalifications of contractors and subcontractors.

In order to establish a list of reliable persons qualified to bid on a department contract or to subcontract with such persons and to ensure that the contract may be awarded to the lowest reliable bidder, the department may adopt and publish in print or electronically uniform and reasonable rules and regulations which may include but not be limited to the following:

(1) A requirement that every contractor desiring to be qualified to bid or subcontract file with the department an application including, among other information: a financial statement; a complete questionnaire regarding the contractor's organization and the work performed by such contractor; and a statement of equipment owned or leased by such contractor;

(2) Conditions under which a contractor or subcontractor may become disqualified to bid or to subcontract;

(3) Procedures for assigning maximum capacity ratings to contractors and subcontractors; and

(4) Provisions for waiving prequalification of contractors for construction of specialty items. For the purpose of this paragraph, "specialty items" means work that requires highly specialized knowledge, craftsmanship, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid on the contract as a whole. (Code 1933, § 95A-807, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 2010, p. 838, § 10/SB 388.)

The 2010 amendment, effective June 3, 2010, inserted "in print or electronically" in the introductory language.

32-2-67. Payment by bidder to cover costs.

A bidder shall be required to pay to the department a reasonable sum sufficient to cover the cost to the department of copies of the bid proposal form of the department, the standard specifications of the department, and the plans of the contract if such plans are required because the particular contract calls for construction. (Code 1933, § 95A-808, enacted by Ga. L. 1973, p. 947, § 1.)

32-2-68. Proposal guaranty by bidder.

(a) No bid will be considered by the department unless it is accompanied by a proposal guaranty in the form of a certified check or other acceptable security payable to the treasurer of the department for an amount deemed by the department to be in the public interest and necessary to ensure that the successful bidder will execute the contract on which he bid.

(b) A proposal guaranty will be returned to a bidder upon receipt by the department of the bidder's written withdrawal of his bid if such receipt is before the time scheduled for the opening of bids. Upon the determination by the department of the lowest reliable bidder, the department will return the proposal guaranties to all bidders except that of the lowest reliable bidder. If no contract award is made within

30 days after the date set for the opening of bids, all bids shall be rejected and all proposal guaranties shall be returned unless the department and the successful bidder agree in writing to a longer period of time. (Code 1933, § 95A-809, enacted by Ga. L. 1973, p. 947, § 1.)

JUDICIAL DECISIONS

Forfeiture of bid bond. — Contractor's bid bond was required to be forfeited since the contractor first attempted to withdraw the contractor's bid after all bids submitted were opened and then declined to execute the contract awarded to the contractor. *DOT v. American Ins. Co.*, 268 Ga. 505, 491 S.E.2d 328 (1997).

32-2-69. Bidding process and award of contract.

(a) Except as authorized by Code Sections 32-2-79 and 32-2-80, the department shall award the contract to the lowest reliable bidder, provided that the department shall have the right to reject any and all such bids whether such right is reserved in the public notice or not and, in such case, the department may readvertise, perform the work itself, or abandon the project.

(b) If only one bid is received, the department shall open and read the bid. If the bid is at or below the department's cost estimate for the project as certified by the chief engineer, such cost estimate shall be read immediately and publicly. If the bid exceeds the department's cost estimate for the project, the department may negotiate with the bidder to establish a fair and reasonable price for the contract, provided that the resulting negotiated contract price is not greater than the bid and that the department's cost estimate is disclosed to the bidder prior to the beginning of the negotiations.

(c) If the department made errors in the bidding documents which resulted in an unbalanced bid, the department may negotiate with the lowest reliable bidder to correct such errors, provided that the lowest reliable bidder is not changed.

(d) If the lowest reliable bidder is released by the department because of an obvious error or if the lowest reliable bidder refuses to accept the contract and thereby forfeits the bid bond, the department may award the contract to the next lowest reliable bidder, readvertise, perform the work itself, or abandon the project.

(e) For purposes of this Code section, posting of a bid on the department's website shall be equivalent to having read the bid. (Code 1933, § 95A-810, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1986, p. 153, § 1; Ga. L. 1994, p. 591, § 7; Ga. L. 2003, p. 905, § 3; Ga. L. 2012, p. 1343, § 3/HB 817.)

The 2012 amendment, effective July 1, 2012, added subsection (e).
Law reviews. — For note on the 2003

amendment to this Code section, see 20 Ga. St. U.L. Rev. 170 (2003).

JUDICIAL DECISIONS

Forfeiture of bid bond. — Contractor's bid bond was required to be forfeited after the contractor first attempted to withdraw the contractor's bid after all bids submitted were opened and then declined to execute the contract awarded to the contractor. DOT v. American Ins. Co., 268 Ga. 505, 491 S.E.2d 328 (1997).

Department of Transportation was not obligated to release a bidder from the bidder's contractual obligations due to an obvious error in the bid. DOT v. American Ins. Co., 268 Ga. 505, 491 S.E.2d 328 (1997).

Reliable bidder. — Even if a contractor's claim that a state transportation department violated the contractor's U.S. Const., amend. 14 equal protection rights by subjecting the contractor's paving work to testing and by preventing the contrac-

tor's lowest bid for a repaving project from being accepted was cognizable as a class of one claim, the contractor's complaint did not meet the tightened Fed. R. Civ. P. 8 requirements for 42 U.S.C. § 1983 claims; the contractor did not identify similarly situated contractors who were treated more favorably with regard to defect testing, and the comparator cited by the contractor with regard to the failure to facilitate acceptance of the contractor's repaving bid was not properly alleged to have been similarly situated in the absence of an allegation of performance problems, particularly when O.C.G.A. § 32-2-69(a) did not require that the lowest bidder be chosen, but that the lowest reliable bidder be chosen. Douglas Asphalt Co. v. Qore, Inc., 541 F.3d 1269 (11th Cir. 2008).

OPINIONS OF THE ATTORNEY GENERAL

Letting one-bid projects, limited negotiation with certain bidders, and letting to second-low bidders are now legal under O.C.G.A. § 32-2-69 and can be included in the "advertised specifications," whether that term can be applied

to the standard specifications themselves or whether the three identified circumstances must be specifically referenced in the actual advertisement of the project. 1986 Op. Att'y Gen. No. 86-21.

RESEARCH REFERENCES

ALR. — Public contracts: authority of state or its subdivision to reject all bids, 52 ALR4th 186.

Public contracts: low bidder's monetary relief against state or local agency for nonaward of contract, 65 ALR4th 93.

32-2-70. Bonds of successful bidder.

Where the contract price exceeds \$100,000.00, no department construction contract shall be valid unless the contractor first gives:

- (1) The performance and payment bonds in accordance with Chapter 10 of Title 13; and
- (2) Such other bonds or insurance policies required by the department in its proposal forms, including but not limited to public liability and property damage insurance bonds or policies. (Code 1933,

§ 95A-811, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 2001, p. 4, § 32; Ga. L. 2001, p. 820, § 2; Ga. L. 2007, p. 167, § 2/HB 192.)

Code Commission notes. — The amendment of this Code section by Ga. L. 2001, p. 4, § 32, irreconcilably conflicted with and was treated as superseded by Ga. L. 2001, p. 820, § 2. See *County of Butts v. Strahan*, 151 Ga. 417 (1921).

RESEARCH REFERENCES

ALR. — Failure of public authorities to take contractor's bond as required by law, as rendering them liable to laborers or materialmen, 64 ALR 678.

Validity of statute or ordinance which requires liability or indemnity insurance

or bond as condition of license for conducting business or profession, 120 ALR 950.

State or local government's liability to subcontractors, laborers, or materialmen for failure to require general contractor to post bond, 54 ALR5th 649.

32-2-71. Failure of successful bidder to sign contract or furnish bonds.

If the successful bidder fails to sign the contract or furnish the bonds or policies required by Code Section 32-2-70, the proposal guaranty will become the property of the department as liquidated damages. The contract then may be readvertised or the project may be abandoned. (Code 1933, § 95A-812, enacted by Ga. L. 1973, p. 947, § 1.)

JUDICIAL DECISIONS

Forfeiture of bid bond. — Contractor's bid bond was required to be forfeited after the contractor first attempted to withdraw the contractor's bid after all

bids submitted were opened and then declined to execute the contract awarded to the contractor. *DOT v. American Ins. Co.*, 268 Ga. 505, 491 S.E.2d 328 (1997).

32-2-72. Oath by successful bidder.

A successful bidder, before commencing the work, shall execute a written oath, as required by subsection (e) of Code Section 36-91-21, stating that he or she has not violated such Code section which makes it unlawful to restrict competitive bidding. (Code 1933, § 95A-813, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 2000, p. 498, § 7; Ga. L. 2001, p. 820, § 3.)

32-2-73. Supplemental and extension agreements.

The department shall be authorized to execute supplemental agreements to the original contract covering changes or revised or new unit prices and items and supplementing the original contract not to exceed a 20 percent increase in cost of the project and to execute extension agreements affecting the length of the project which may be increased by adding sections to said project or by relocation of said project not to

exceed 20 percent of the total length of the project or 20 percent of total contract cost. (Ga. L. 1949, p. 373, § 4; Code 1933, § 95A-814, enacted by Ga. L. 1973, p. 947, § 1.)

OPINIONS OF THE ATTORNEY GENERAL

Department of Transportation professional service contracts. — While the provisions of O.C.G.A. § 32-2-73 do not apply to contracts for professional services, which are governed by O.C.G.A. § 50-22-1 et seq., legislation is required to

allow the Department of Transportation to exceed the limitations of such professional services contracts found in O.C.G.A. § 50-6-25(b). 1994 Op. Att'y Gen. No. U94-14.

32-2-74. Effect of federal laws on Code Sections 32-2-60 through 32-2-73; power of department to secure benefits of federal-aid program.

(a) Nothing in Code Sections 32-2-60 through 32-2-73 is intended to conflict with any federal law; and, in case of such conflict, such portion of those Code sections as may be in conflict with such federal law is declared of no effect to the extent of the conflict.

(b) The department is authorized to take the necessary steps to secure the full benefit of the federal-aid program and to meet any contingencies not provided for in Code Sections 32-2-60 through 32-2-73, abiding at all times by a fundamental purpose to plan, survey, construct, reconstruct, maintain, improve, and pave as economically as possible those public roads of Georgia which, under the terms of Code Sections 32-2-60 through 32-2-73, are most in need of such construction or work in such a manner as will best promote the interest, welfare, and progress of the citizens of Georgia. (Code 1933, § 95A-815, enacted by Ga. L. 1973, p. 947, § 1.)

32-2-75. Contract clauses for retainage of amounts constituting a percentage of gross value of completed work; time of final payment of retained amounts to contractor.

(a) As used in this Code section and Code Sections 32-2-76 and 32-2-77, the term:

(1) "Engineer" means the chief engineer or the engineer designated by the Georgia Highway Authority or the State Road and Tollway Authority.

(2) "Escrow account" means the certificates of deposit issued by a state or national bank in Georgia and any uninvested cash held in escrow.

(3) "State" means the Department of Transportation, the Georgia Highway Authority, or the State Road and Tollway Authority.

(4) "Treasurer" means the treasurer of the Department of Transportation, the treasurer of the Georgia Highway Authority, or the treasurer of the State Road and Tollway Authority.

(b) The state is authorized to insert a clause in the specifications of all contracts let and awarded as a result of public lettings for the construction, improvement, maintenance, or repair of any road, highway, bridge, or appurtenance thereto providing for the retainage of amounts constituting a percentage of the gross value of the completed work as may be provided for in the contract.

(c) Final payment of the retained amounts to the contractor under the contract to which the retained amount relates will be made after certification by the engineer that the work has been satisfactorily completed and is accepted in accordance with the contract, plans, and specifications. (Ga. L. 1971, p. 635, § 1; Ga. L. 1982, p. 3, § 32; Ga. L. 1985, p. 149, § 32; Ga. L. 1994, p. 591, § 8; Ga. L. 2001, p. 1251, § 2-1.)

Cross references. — Authorization and procedure for retention of contractual payments by state or political subdivisions; procedure for final payment,

§ 13-10-81. Georgia Highway Authority, § 32-10-1 et seq. State Road and Tollway Authority, § 32-10-60 et seq.

RESEARCH REFERENCES

Am. Jur. 2d. — 13 Am. Jur. 2d, Building and Construction Contracts, § 22.

C.J.S. — 17B C.J.S., Contracts, § 583.

ALR. — Right and duty of highway contractor as to barricading or obstructing street or highway, 104 ALR 955.

32-2-76. Contract clauses providing for escrow agreements; mandatory provisions of escrow agreements.

(a) In lieu of the retained amounts provided for in Code Section 32-2-75, the state is authorized to insert a clause in the specifications of all contracts let and awarded as a result of public lettings for the construction, improvement, maintenance, or repair of any road, highway, bridge, or appurtenance thereto providing for the maintenance of an escrow account in an amount at least equal to the amount of the retainage authorized by the contract, in accordance with such rules and regulations as are authorized to be promulgated by the state.

(b) Any such escrow agreement entered into pursuant to this Code section must contain as a minimum the following provisions:

(1) Only state or national banks chartered within this state may serve as an escrow agent;

(2) The escrow agent must limit the investment of funds of the contractor held in escrow in lieu of retained amounts provided for in Code Section 32-2-75 to negotiable certificates of deposits issued by

any state or national bank in this state, including but not limited to certificates of deposit issued by the bank acting as escrow agent, registered in the name of the escrow agent as such under escrow agreement with the contractor;

(3) As interest on certificates of deposits held in escrow becomes due, it shall be collected by the escrow agent and paid to the contractor;

(4) The escrow agent shall promptly acknowledge to the treasurer of the department or the appropriate authority the amount and value of the escrow account held by the escrow agent, and any additions to the escrow account shall be reported immediately. Withdrawals from the escrow account shall only be made subject to the written approval of the treasurer of the department or the appropriate authority;

(5) Upon default or overpayment, as determined by the state, of any contract subject to this procedure and upon the written demand of the treasurer of the department or the appropriate authority, the escrow agent shall within ten days deliver a certified check to the treasurer of the department or the appropriate authority in the amount of the escrow account balance relating to the contract in default;

(6) The escrow account may be terminated upon completion and acceptance of the contract(s) as provided in Code Section 32-2-75;

(7) All fees and expenses of the escrow agent shall be paid by the contractor to the escrow agent and if not paid shall constitute a lien on the interest accruing to the escrow account and shall be paid therefrom;

(8) The escrow account shall constitute a specific pledge to the state, and the contractor shall not, except to his surety, otherwise assign, pledge, discount, sell, or transfer his interest in said escrow account, the funds in which shall not be subject to levy, garnishment, attachment, or any other process whatsoever; and

(9) The form of the escrow agreement and provisions thereof in compliance with this Code section as well as such other provisions as the treasurer of the department or the appropriate authority shall from time to time prescribe shall be subject to written approval of the treasurer of the department or the appropriate authority. The approval of the escrow agreement by the treasurer of the department or the appropriate authority shall authorize the escrow agent to accept appointment in such capacity. (Ga. L. 1971, p. 635, § 2; Ga. L. 1982, p. 3, § 32.)

RESEARCH REFERENCES

Am. Jur. 2d. — 13 Am. Jur. 2d, Building and Construction Contracts, § 22.

C.J.S. — 17B C.J.S., Contracts, § 583.

32-2-77. Liability of treasurer of the department or other appropriate authority and state to contractor or surety.

Neither the treasurer of the department or the appropriate authority nor the state shall be liable to the contractor or his surety for the failure of the escrow agent to perform under the escrow agreement, or for the failure of any bank to honor certificates of deposits issued by it which are held in the escrow account. (Ga. L. 1971, p. 635, § 3.)

RESEARCH REFERENCES

C.J.S. — 30A C.J.S., Escrows, § 15 et seq.

32-2-78. Definitions.

As used in this Code section and Code Sections 32-2-79 and 32-2-80, the term:

(1) "Participating local governing authority" includes the governing authority of any county or municipality whose geographical jurisdiction includes the project.

(2) "Project" means a project which the department deems appropriate for letting pursuant to the procedures of Code Section 32-2-79 and Code Section 32-2-80. (Code 1981, § 32-2-78, enacted by Ga. L. 2009, p. 976, § 10/SB 200.)

Editor's notes. — Former Code Section 32-2-78, concerning definitions, was based on Code 1981, § 32-2-78, enacted by Ga. L. 2003, p. 905, § 1; Ga. L. 2005, p.

902, § 1/SB 270, and was repealed by Ga. L. 2009, p. 976, § 1/SB 200, effective May 11, 2009.

OPINIONS OF THE ATTORNEY GENERAL

Projects pending at time of amendment. — Georgia Department of Transportation's authority to enter a binding contract pursuant to the former Public Private Initiatives law was revoked by the 2009 Public Private Partnership law;

those projects or portions of projects which were not formalized by an executed contract with the selected firm before May 11, 2009, must be re-procured under the authority and provisions of the 2009 law. 2009 Op. Att'y Gen. No. 2009-7.

32-2-79. Reporting on congestion mitigation; letting of projects.

(a) The staff of the department shall jointly identify and report to the board by July 31 of each odd-numbered year those projects on the state-wide transportation improvement program or otherwise identified that afford the greatest gains in congestion mitigation or promotion of economic development.

(b) Any project identified pursuant to subsection (a) of this Code section that will not be initiated within two years of the reporting date or that does not have specific available and complete funding may be let and constructed utilizing the procedures of this Code section and Code Section 32-2-80. All personnel of the department shall cooperate in all respects in the letting, construction, maintenance, and operation of such projects, including without limitation providing such access and control of portions of the state highway system as may be requested or required from time to time for such purposes.

(c) Projects wholly or partly in a metropolitan planning area shall be included in a fiscally constrained transportation improvement program. (Code 1981, § 32-2-79, enacted by Ga. L. 2009, p. 976, § 10/SB 200.)

Editor's notes. — Former Code Section 32-2-79, concerning requirements for solicited and unsolicited proposals for public-private initiative, was based on Code 1981, § 32-2-79, enacted by Ga. L. 2003, p. 905, § 2; Ga. L. 2005, p. 902, § 2/SB 270; Ga. L. 2006, p. 72, § 32/SB 465, and was repealed by Ga. L. 2009, p. 976, § 1/SB 200, effective May 11, 2009.

Administrative rules and regulations. — Governing the public-private transportation initiatives, Official Compilation of the Rules and Regulations of the State of Georgia, State Department of Transportation, Chapter 672-17.

32-2-80. Evaluation of participation in financing projects; public comments; funding; no delegation of eminent domain; performance and payment security.

(a)(1) The department shall evaluate a project to determine, in the judgment of the department, appropriate or desirable levels of state, local, and private participation in financing such project. In making such determination, the department shall be authorized and encouraged to seek the advice and input of the affected local governing authorities, applicable metropolitan planning organizations, and the private financial and construction sectors.

(1.1) No constitutional officer or member of the State Transportation Board shall serve as an agent, lobbyist, or board member for any entity directly or indirectly under contract with or negotiating a contract with the department under this Code section for one year after leaving his or her position as a constitutional officer or member of the State Transportation Board.

(2) For projects that are funded or financed in part or in whole by private sources, the department shall be authorized to issue a written request for proposal indicating in general terms the scope of the project, the proposed financial participations in the project, and the factors that will be used in evaluating the proposal and containing or incorporating by reference other applicable contractual terms and conditions, including any unique capabilities or qualifications that will be required of the contractor. Public notice of such request for proposal shall be made at least 90 days prior to the date set for receipt of proposals by posting the legal notice on a single website that shall be procured and maintained for such purposes by the Department of Administrative Services or in substantially the same manner utilized by the department to solicit requests for proposals.

(3) Upon receipt of a proposal or proposals responsive to the request for proposals, the department shall accept written public comment, solicited in the same manner as provided for notice of proposals, for a period of 30 days beginning at least ten days after the date set for receipt of proposals. In addition, the department shall hold at least one public hearing on such proposals not later than the conclusion of the period for public comment.

(4) The department shall engage in individual discussions with two or more respondents deemed fully qualified, responsible, and suitable on the basis of initial responses and with emphasis on professional competence and ability to meet the level of private financial participation called for by the department. Repetitive informal interviews shall be permissible. In the event that any local governing authority has agreed to consider financial participation in the project, a representative of such local governing authority, appointed by such local governing authority, may participate in such discussions and interviews. At the discussion stage, the department may discuss estimates of total project costs, including, but not limited to, life cycle costing and nonbinding estimates of price for services. Proprietary information from competing respondents shall not be disclosed to the public or to competitors. At the conclusion of such discussions, on the basis of evaluation factors published in the request for proposal and all information developed in the selection process, the department, with the input of any participating local governing authority, shall select in the order of preference two or more respondents whose qualifications and proposed services are deemed most meritorious. Negotiations shall then be conducted with two or more respondents and with the participation of the designated representative of any participating local governing authority. Upon approval by the department, the commissioner shall select the respondent for project implementation based upon contract terms that are the most satisfactory and advantageous to the state and to

the department based upon a thorough assessment of value and the ability of the final project's characteristics to meet state strategic goals and investment policies as provided for by paragraphs (1) through (10) of subsection (a) of Code Section 32-2-41.1. Before making such selection, the commissioner shall consult with any participating local governing authority or authorities. Notwithstanding the foregoing, if the terms and conditions for multiple awards are included in the request for proposal, the department may award contracts to more than one respondent. Should the department determine in writing and in its sole discretion that only one respondent is fully qualified, or that one respondent is clearly more highly qualified and suitable than the others under consideration, a contract may be negotiated and awarded to that respondent.

(5) Nothing in this Code section shall require the department to continue negotiations or discussions arising out of any request for proposal.

(6) The department shall be authorized to promulgate reasonable rules or regulations to assist in its evaluation of the proposal and to implement the purposes of this Code section. The department shall report the content of such rules or regulations to the Transportation Committees of the Senate and House of Representatives for their approval by majority vote prior to the promulgation thereof and shall make quarterly reports to the same chairpersons of all of its activities undertaken pursuant to the provisions of this Code section.

(b) Any contracts entered into pursuant to this Code section may authorize funding to include tolls, fares, or other user fees and tax increments for use of the project that is the subject of the proposal. Such funding may be distributed by contract among the participants in the project as may be provided for by contract. The department may take any action to obtain federal, state, or local assistance for a qualifying project that serves the public purpose of this Code section and may enter into any contracts required to receive such assistance. The department may determine that it serves the public purpose of this Code section for all or any portion of the costs of a qualifying project to be paid, directly or indirectly, from the proceeds of a grant or loan made by the federal, state, or local government or any instrumentality thereof. The department may agree to make grants or loans to the operator from time to time from amounts received from the federal, state, or local government or any agency or instrumentality thereof.

(c) The commissioner shall be authorized to delegate such duties and responsibilities under this Code section as he or she deems appropriate from time to time; provided, however, that the final approval of contracts provided for in this Code section shall be by action of the State Transportation Board.

(d) The power of eminent domain shall not be delegated to any private entity with respect to any project commenced or proposed pursuant to this Code section.

(e) Any contract for a public-private partnership shall require the private partner or each of its prime contractors to provide performance and payment security. Notwithstanding any other provision of law, the penal sum or amount of such security may be less than the price of the contract involved, based upon the department's determination on a project-by-project basis of what sum may be required to adequately protect the department, the state, and the contracting and subcontracting parties. (Code 1981, § 32-2-80, enacted by Ga. L. 2009, p. 976, § 10/SB 200.)

Editor's notes. — Former Code Section 32-2-80, concerning authority to contract with proposer for public-private initiative, was based on Code 1981,

§ 32-2-80, enacted by Ga. L. 2003, p. 905, § 2; Ga. L. 2005, p. 902, § 3/SB 270, and was repealed by Ga. L. 2009, p. 976, § 1/SB 200, effective May 11, 2009.

OPINIONS OF THE ATTORNEY GENERAL

O.C.G.A. § 32-2-80(a)(2) authorizes a single method of procurement for contracts for a newly defined form of contract: a contract for public-private partnerships. While the former Public Private Initiatives law permitted both solicited and unsolicited proposals, the 2009 Public Private Partnership law, O.C.G.A. § 32-2-78 et seq., requires, that a solicited proposal be utilized. 2009 Op. Att'y Gen. No. 2009-7.

Qualification for consideration under public-private partnership. — The 2009 Public Private Partnership law, O.C.G.A. § 32-2-78 et seq., now contemplates that only those "projects that are funded or financed in part or in whole by private sources" qualify for consideration under the public-private partnership pro-

visions of O.C.G.A. § 32-2-80, whereas the former Public Private Initiatives law authorized private financial contribution as one of three permissible legal foundations for the contract. 2009 Op. Att'y Gen. No. 2009-7.

Projects pending at time of amendment. — Georgia Department of Transportation's authority to enter a binding contract pursuant to the former Public Private Initiatives law was revoked by the 2009 Public Private Partnership law, O.C.G.A. § 32-2-78 et seq.; those projects or portions of projects which were not formalized by an executed contract with the selected firm before May 11, 2009, must be re-procured under the authority and provisions of the 2009 law. 2009 Op. Att'y Gen. No. 2009-7.

32-2-81. "Design-build procedure" defined; procedures for utilization; receipt of letters of interest; limitation on contracting; summary projects.

(a) As used in this Code section, the term "design-build procedure" means a method of contracting under which the department contracts with another party for the party to both design and build the structures, facilities, and other items specified in the contract.

(b) The department may use the design-build procedure for buildings, bridges and approaches, rail corridors, and limited or controlled

access projects or projects that may be constructed within existing rights of way where the scope of work can be clearly defined or when a significant savings in project delivery time can be attained.

(c) When the department determines that it is in the best interests of the public, the department may combine any or all of the environmental services, right of way services, design services, and construction phases of a public road or other transportation purpose project into a single contract using a design-build procedure. Design-build contracts may be advertised and awarded notwithstanding the requirements of paragraph (1) of subsection (d) of Code Section 32-2-61. However, construction activities may not begin on any portion of such projects until title to the necessary rights of way and easements for the construction of that portion of the project has vested in the state or a local governmental entity and all railroad crossing and utility agreements have been executed.

(d) The department shall adopt by rule procedures for administering design-build contracts. Such procedures shall include, but not be limited to:

- (1) Prequalification requirements;
- (2) Public advertisement procedures;
- (3) Scope of service requirements;
- (4) Letters of interest requirements;

(5) Request for proposals. Requests for proposal shall include the applicable percentage to be applied to each evaluation criterion and the relative weight to be assigned to each;

(6) Criteria for evaluating technical information and project costs;

(7) Criteria for selection and award process, provided that the rules shall specify that the criteria for selection shall consist of the following minimum two components:

(A) A statement of qualifications from which the department will determine a list of qualified firms for the project; and

(B) From the list of qualified firms as provided in subparagraph (A) of this paragraph, a price proposal from each firm from which the department shall select the lowest qualified bidder; provided, however, that a proposal will only be considered nonresponsive if it does not contain all the information and level of detail requested in the request for proposal. A proposal shall not be deemed to be nonresponsive solely on the basis of minor irregularities in the proposal that do not directly affect the ability to fairly evaluate the merits of the proposal. Notwithstanding the requirements of Code

Section 36-91-21, under no circumstances shall the department use a "best and final offer" standard in awarding a contract. The department may provide for a stipulated fee to be awarded to the short list of qualified proposers who provide a responsive, successful proposal. In consideration for paying the stipulated fee, the department may use any ideas or information contained in the proposals in connection with the contract awarded for the project, or in connection with a subsequent procurement, without obligation to pay any additional compensation to the unsuccessful proposers;

(8) Identification of those projects that the department believes are candidates for design-build contracting, with the understanding that in general this type of contract should have minimal right of way or utility issues which are unresolved; provided, however, the failure of the department to identify such projects does not prevent the department from using design-build contracting in extraordinary circumstances including emergency work, unscheduled projects, or where loss of funding might occur; and

(9) Criteria for resolution of contract issues. The department may adopt a method for resolving issues and disputes through negotiations at the project level by the program manager up to and including a dispute review board procedure with final review by the commissioner or his or her designee. Regardless of the status or disposition of the issue or dispute, the design-builder and the department shall continue to perform their contractual responsibilities. The department shall have the authority to suspend or provide for the suspension of Section 108 of the department's standard specifications pending final resolution of such contract issues and disputes. This paragraph does not prevent an aggrieved party from seeking judicial review.

(e) The department must receive at least three letters of interest in order to proceed with a request for proposals. The department shall request proposals from no fewer than three of the design-build firms submitting letters of interest. If a design-build firm withdraws from consideration after the department requests proposals, the department may continue if at least two proposals are received.

(f) In contracting for design-build projects, the department shall be limited to contracting for no more than 50 percent of the total amount of construction projects awarded in the previous fiscal year.

(g) Not later than 90 days after the end of the fiscal year, the department shall provide to the Governor, Lieutenant Governor, Speaker of the House of Representatives, and chairmen of the House and Senate Transportation Committees a summary containing all the

projects awarded during the fiscal year using the design-build contracting method. Included in the report shall be an explanation for projects awarded to other than the low bid proposal. This report shall be made available for public information. (Code 1981, § 32-2-81, enacted by Ga. L. 2004, p. 905, § 2; Ga. L. 2005, p. 950, § 1/HB 530; Ga. L. 2009, p. 8, § 32/SB 46; Ga. L. 2010, p. 396, § 1/SB 305; Ga. L. 2012, p. 1343, § 4/HB 817.)

The 2010 amendment, effective July 1, 2010, in subsection (f), substituted “30 percent” for “15 percent” in the first sentence and added the second sentence.

The 2012 amendment, effective July 1, 2012, in subsection (f), substituted “50 percent” for “30 percent” in the first sen-

tence and deleted the second sentence, which read: “After July 1, 2014, in contracting for design-build projects, the department shall be limited to contracting for no more than 15 percent of the total amount of construction projects awarded in the previous fiscal year.”

CHAPTER 3

ACQUISITION OF PROPERTY FOR TRANSPORTATION PURPOSES

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Article 2

Acquisition of Rights of Way and Easements for Federal Parkways

T.32, C.3 PROPERTY ACQUISITION FOR TRANSPORTATION T.32, C.3, A.1

Sec.	way to United States government or its appropriate agency.	Sec.	
32-3-37.	Use of property before final condemnation; enforcement of Code section.	32-3-39.	Concurrent jurisdiction conceded to United States government; taxing power of state reserved.
32-3-38.	Advertisement restrictions near parkways.		

Cross references. — Power of condemnation, Ga. Const. 1983, Art. III, Sec. VI, Para. II. Exercise by Department of Transportation of power of eminent domain to acquire property for construction of welcome centers, § 50-7-12.

Law reviews. — For annual survey of law of real property, see 38 Mercer L. Rev. 319 (1986).

JUDICIAL DECISIONS

Effect of § 32-8-1 on relocation expenses. — Enactment of O.C.G.A. § 32-8-1 does not alter the fact that relocation expenses, whether awarded judicially or administratively, are still a part of the “just and adequate compensation” guaranteed to condemnees under the Constitution. DOT v. Gibson, 251 Ga. 66, 303 S.E.2d 19 (1983).

Relocation expenses may be recovered by administrative proceeding. — Under O.C.G.A. § 32-8-1, a condemnee whose property is being acquired for fed-

erally assisted highway projects may, but is not required to, seek payment of relocation expenses directly from the Department of Transportation in an administrative action. DOT v. Gibson, 251 Ga. 66, 303 S.E.2d 19 (1983).

Seeking administrative payment of relocation expenses precludes a separate judicial determination of the same relocation expenses in the statutorily authorized condemnation proceedings. DOT v. Gibson, 251 Ga. 66, 303 S.E.2d 19 (1983).

ARTICLE 1

GENERAL PROVISIONS

JUDICIAL DECISIONS

**Procedure for taking property compo-
ports with due process.** — Procedure for taking property under O.C.G.A. Art. 1, Ch. 3, T. 32 does not offend the due process guarantees of either the state or federal constitutions; however, to ensure due process to the property owner, the statute must be strictly conformed to by the con-

demning body. Dorsey v. DOT, 248 Ga. 34, 279 S.E.2d 707 (1981).

**Notice pleading does not apply to
condemnation proceedings.** — General notion of notice pleading under O.C.G.A. Ch. 11, T. 9 does not apply to condemnation proceedings. Dorsey v. DOT, 248 Ga. 34, 279 S.E.2d 707 (1981).

32-3-1. Authority to acquire property for present or future public road or other transportation purposes.

(a) Any property may be acquired in fee simple or in any lesser interest, including scenic easements, airspace, and rights of access, by a state agency or a county or municipality through gift, devise, exchange, purchase, prescription, dedication, eminent domain, or any other manner provided by law for present or future public road or other transportation purposes.

(b) Public road purposes shall include rights of way; detours; bridges; bridge approaches; ferries; ferry landings; overpasses; underpasses; viaducts; tunnels; fringe parking facilities; borrow pits; offices; shops; depots; storage yards; buildings and other necessary physical facilities of all types; roadside parks and recreational areas; the growth of trees and shrubbery along rights of way; scenic easements; construction for drainage, maintenance, safety, or esthetic purposes; the elimination of encroachments, private or public crossings, or intersections; the establishment of limited-access public roads; the relocation of utilities; and any and all other purposes which may be reasonably related to the development, growth, or enhancement of the public roads of Georgia.

(c) Property or interests shall not be acquired for "future public road purposes," as that term is used in this Code section, unless:

(1) Construction will be commenced on the property to be acquired within a period of not less than two years nor more than ten years following the end of the fiscal year in which the secretary of transportation of the United States approves an advance of all the necessary funds to the department for the acquisition of rights of way for such construction under authority of Title 23, Section 108, United States Code, as amended; and

(2) The intended acquisition is part of a specific plan of highway development, and the acquisition will assist in accomplishing one or more of the following:

(A) A substantial monetary savings;

(B) The enhancement of the integration of highways with public or private urban redevelopment; or

(C) The forestalling of the physical or functional obsolescence of highways.

(d) In the process of acquiring property or interests for any public road purpose, an entire lot, block, or tract of land may be acquired if by so doing the interest of the public will be best served. (Code 1933, § 95A-601, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1981, p. 878, § 1; Ga. L. 1982, p. 3, § 32; Ga. L. 1985, p. 149, § 32.)

Cross references. — Municipal street improvements, T. 36, C. 39. Easements generally, T. 44, C. 9.

Law reviews. — For article surveying real property law in 1984-1985, see 37 Mercer L. Rev. 343 (1985).

For comment on *Southern Ry. v. State Hwy. Dep't.*, 219 Ga. 435, 134 S.E.2d 12 (1963), see 1 Ga. St. B.J. 242 (1964).

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

AUTHORITY TO CONDEMN

LEGISLATIVE INTENT

TRIAL

1. PRELIMINARY PROCEDURE
2. BURDEN OF PROOF
3. VERDICT AND APPEAL

General Consideration

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Civil Code 1910, § 640; former Code 1933, §§ 36-1001, 95-1701, 95-1710, 95-1715, 95-1721, 95-1724, and Chs. 23-6, 95-2, and 95-17; former Ga. L. 1955, p. 559, and former Ga. L. 1961, p. 517, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section.

Condemnation Act requirements override all Civil Practice Act provisions. — Requirements of the Condemnation Act override all provisions of the Civil Practice Act, O.C.G.A. Ch. 11, T. 9, in conflict with the Condemnation Act's special purposes. *DOT v. Defoor*, 173 Ga. App. 218, 325 S.E.2d 863 (1984).

Service of process requirement. — Property owner's motion to dismiss for improper service of process was properly denied in a city's in rem forfeiture action because the service requirements of the Civil Procedure Act, O.C.G.A. § 9-11-4(a), did not apply and a property owner was informed of the owner's appellate rights as required by O.C.G.A. § 32-3-1 et seq., Acquisition of Property for Transportation Purposes. *Whigham v. City of Atlanta*, 262 Ga. App. 742, 586 S.E.2d 412 (2003).

No power to damage property without taking property interest. — People, in adopting the Constitution, and the General Assembly, in enacting O.C.G.A.

§ 32-3-1, did not intend to allow a public body to condemn the right to damage property without also taking a property interest. *Metropolitan Atlanta Rapid Transit Auth. v. Trussell*, 247 Ga. 148, 273 S.E.2d 859 (1981).

No statutory requirement for simultaneous land acquisition. — Because there is no statutory provision that all land for a project must be acquired simultaneously, the Department of Transportation did not abuse the department's condemnatory powers by taking appellant's property to construct an allegedly private roadway without acquiring the adjacent property necessary to complete the project. *Texaco, Inc. v. DOT*, 165 Ga. App. 338, 301 S.E.2d 59 (1983).

Property upon which construction will commence within two years is not acquired for "future" public road purposes and is not subject to the restrictions of O.C.G.A. § 32-3-1 upon acquisitions for "future" public road purposes. *Citizens Coalition for Planned Growth, Inc. v. Glynn County*, 249 Ga. 664, 292 S.E.2d 847 (1982).

For purposes of O.C.G.A. § 32-3-1, "present road purposes" refers to construction to begin in less than two years, while "future public road purposes" refers to construction that will commence within a period of not less than two nor more than ten years. *Fulton County v. Davidson*, 253 Ga. 734, 325 S.E.2d 135 (1985).

Subdivision lot owners have easement in roads. — Where the owners of a

General Consideration (Cont'd)

tract of land subdivide the tract into lots, record a map or plat showing such lots, with designated streets and a public park, and sell lots with reference to such map or plat, the owners are presumed to have irrevocably dedicated such streets and park for the use of all of the lot owners in the subdivision. The owners of lots in the subdivision have an easement in these public areas whether or not there has ever been an acceptance of the dedication by public authorities or the public generally. *Northpark Assocs. No. 2 v. Homard Dev. Co.*, 262 Ga. 138, 414 S.E.2d 214 (1992).

Dedication in plat transfers only easement. — There is a presumption that the dedication of roads to a county, whether express or implied, transfers only an easement. *Northpark Assocs. No. 2 v. Homard Dev. Co.*, 262 Ga. 138, 414 S.E.2d 214 (1992).

Governing authority can acquire fee-simple title to a county road only through condemnation or an express grant in a deed or other instrument. When a road is established by dedication and there is no express grant of fee-simple title, an easement results. *Northpark Assocs. No. 2 v. Homard Dev. Co.*, 262 Ga. 138, 414 S.E.2d 214 (1992).

An easement was a compensable property interest in a condemnation action. *Lee v. City of Atlanta*, 219 Ga. App. 264, 464 S.E.2d 879 (1995).

Municipally owned property. — Department of Transportation may not exercise eminent domain powers over municipally owned property as the legislature has not clearly granted such authority or created a procedure therefore, and as such grant may not be implied from statutory provisions generally establishing a procedure for state agencies to condemn "private property." *DOT v. City of Atlanta*, 255 Ga. 124, 337 S.E.2d 327 (1985).

Anticipated condemnation uncompensable. — Trial court correctly granted the Department of Transportation's motion for summary judgment as to restaurant owner's claim sounding in inverse condemnation since DOT was not even permitted to acquire property interests for future road building until the federal

agency had approved in advance all the requisite funding. *Thompson v. DOT*, 209 Ga. App. 353, 433 S.E.2d 623 (1993).

Compensation for interests. — Department of Transportation was required to compensate adjoining landowner in action in which the department sought to condemn a strip of land in order to widen a highway for interference with the landowner's access to a public road but not for the revocation of a license allowing the landowner to maintain a driveway over an existing right of way. *Harper Invs., Inc. v. DOT*, 251 Ga. App. 521, 554 S.E.2d 619 (2001).

Counterclaim. — After the Department of Transportation initiated condemnation proceedings against a property owner, the owner was not permitted to file a counterclaim to recover damages for unauthorized use of the remainder because the subject of the counterclaim was outside the bounds of this type of condemnation. *DOT v. Fina Oil & Chem. Co.*, 194 Ga. App. 185, 390 S.E.2d 99 (1990).

Striking valuation testimony proper. — Trial court did not manifestly abuse the court's discretion by striking certain testimony of the condemnee's expert witness regarding valuation on the ground that the testimony was without sufficient foundation since the testimony was based on an assumption of the value as if the subject property had already been subdivided, which it had not; in making the court's ruling, the trial court properly discerned that, even though a different use of the property was shown to have been reasonably probable, a jury cannot evaluate the property as though the new use were an accomplished fact. *Woodland Partners Ltd. P'ship v. DOT*, 286 Ga. App. 546, 650 S.E.2d 277 (2007), cert. denied, 2007 Ga. LEXIS 698 (Ga. 2007).

Cited in *DOT v. City of Atlanta*, 255 Ga. 124, 337 S.E.2d 327 (1985); *DOT v. Samuels*, 185 Ga. App. 871, 366 S.E.2d 181 (1988); *DOT v. Foster*, 262 Ga. App. 524, 586 S.E.2d 64 (2003); *Forest City Gun Club v. Chatham County*, 280 Ga. App. 219, 633 S.E.2d 623 (2006).

Authority to Condemn

Condemnation not required when no prior right of access. — Condemnor

creating a limited access highway does not have to condemn a purported "right of access" where none has previously existed. *DOT v. Hardin*, 231 Ga. 359, 201 S.E.2d 441 (1973) (decided under former Ga. L. 1955, p. 559).

Condemnation authorized when relocating gas line. — State Highway Department (now Department of Transportation) is authorized to take property for the relocation of a gas company's interstate gas line since it was in the interest of safety and prevented inconvenience to the public using the gas line and since the acquisition was in furtherance of and reasonably for a public state highway use. *Benton v. State Hwy. Dep't*, 111 Ga. App. 861, 143 S.E.2d 396 (1965) (decided under former Code 1933, §§ 36-1301, 95-1701, 95-1715, 95-1724).

Condemnation authorized in fee simple. — City was not attempting to acquire a greater interest in the property than that authorized by law by seeking to acquire the land in fee simple. *Marist Soc'y v. City of Atlanta*, 212 Ga. 115, 90 S.E.2d 564 (1955) (decided under former Ga. L. 1955, p. 559).

All interests may be condemned, whether acquired by easement or by fee simple title to the property. *Marist Soc'y v. City of Atlanta*, 212 Ga. 115, 90 S.E.2d 564 (1955) (decided under former Ga. L. 1955, p. 559).

Permanent construction easement. — Under the facts of this case, assertions that the condemnation of a permanent construction easement was an abuse and misuse of the Department of Transportation's (DOT's) powers of condemnation were without merit. *Skipper v. DOT*, 197 Ga. App. 634, 399 S.E.2d 538 (1990).

Legislative Intent

Section strictly construed. — In statutory proceedings, where persons may be deprived of property, this section must be strictly construed. *Marist Soc'y v. City of Atlanta*, 212 Ga. 115, 90 S.E.2d 564 (1955) (decided under former Ga. L. 1955, p. 559; see O.C.G.A. § 32-3-1).

Any agency in joint project can acquire land. — Under former Code 1933, § 95-1704a, it was the legislative intent that, when a limited access highway was

to be constructed by the joint action of several governmental agencies, the rights of way for the highway could be acquired, by purchase, condemnation, or otherwise, by any of the governmental authorities of this state cooperating in the project. *Martin v. Fulton County*, 213 Ga. 761, 101 S.E.2d 716 (1958) (decided under former Ga. L. 1955, -p. 559; see O.C.G.A. § 32-3-1).

Trial

1. Preliminary Procedure

Ordinance needed to condemn where required by municipal charter.

— If the charter of a municipality requires the adoption of a valid ordinance as a prerequisite to the condemnation of private property, and such requirement is not complied with prior to the condemnation proceedings, the action will be enjoined. *Marist Soc'y v. City of Atlanta*, 212 Ga. 115, 90 S.E.2d 564 (1955) (decided under former Ga. L. 1955, p. 559).

Condemnation proceedings are in rem. — Citations of authority that a suitor cannot join in one action in personam a number of persons and causes of action have no application to a condemnation proceeding in rem against described lands. *Marist Soc'y v. City of Atlanta*, 212 Ga. 115, 90 S.E.2d 564 (1955) (decided under former Ga. L. 1955, p. 559).

Condemnor can join several tracts of land in proceeding. — Condemnor can, in one proceeding, condemn a right of way over several tracts of land owned by different persons. *Marist Soc'y v. City of Atlanta*, 212 Ga. 115, 90 S.E.2d 564 (1955) (decided under former Ga. L. 1955, p. 559).

Exhausting administrative remedies. — In an action in which the plaintiff landowners filed suit against the defendant county alleging a taking under the Fifth Amendment, and inverse condemnation under Ga. Const. 1983, Art. I, Sec. III, Para. I, in connection with the county's recreational development of the county's adjoining property, because the landowners failed to avail themselves of Georgia's inverse condemnation procedure, the Fifth Amendment takings claim was pre-

Trial (Cont'd)**1. Preliminary Procedure (Cont'd)**

mature, and the county's motion for partial judgment on the pleadings was granted. *Carney v. Gordon County*, No. 4:06-CV-36-RLV, 2006 U.S. Dist. LEXIS 82634 (N.D. Ga. Sept. 12, 2006).

2. Burden of Proof

Condemnor cannot just abandon condemnation proceedings. *Marist Soc'y v. City of Atlanta*, 212 Ga. 115, 90 S.E.2d 564 (1955) (decided under former Ga. L. 1955, p. 559).

Condemnee's burden of proof in city condemnation proceeding. — In the absence of proof that the city is asserting a right to abandon the project, or that the condemnation proceedings were not in good faith, the condemnation of lands for highways will not be enjoined on the theory that the city is authorized by the city's charter to disapprove an award for the value of the land. *Marist Soc'y v. City of Atlanta*, 212 Ga. 115, 90 S.E.2d 564 (1955) (decided under former Ga. L. 1955, p. 559).

Burden of showing amount and property interest claimed. — It is the duty of persons claiming an interest in property sought to be condemned to establish the amount and character of the interest claimed. *Marist Soc'y v. City of Atlanta*, 212 Ga. 115, 90 S.E.2d 564 (1955) (decided under former Ga. L. 1955, p. 559).

Burden of showing how and what damage occurred. — In an action for damages to private property instituted under Ga. Const. 1976, Art. I, Sec. III, Para. I (see Ga. L. Const. 1983, Art. III, Sec. VI, Para. II) and former Code 1933, § 95-1710, allegations showing the nature of the cause, describing the property damaged, and relating the manner in which the property was damaged in the construction of a designated state highway were proper and necessary to set forth the plaintiff's case. *Bartow County v. Darnell*, 95 Ga. App. 193, 97 S.E.2d 610 (1957) (decided under former Code 1933, § 95-1710).

Trial court erred in denying an agency's motion for a directed verdict pursuant to

O.C.G.A. § 9-11-50 in a condemnation proceeding pursuant to O.C.G.A. § 32-3-1 et seq.; the property owner's appraiser failed to provide adequate evidence that the owner suffered consequential damages based on damage to a fence. *DOT v. Morris*, 263 Ga. App. 606, 588 S.E.2d 773 (2003).

Burden of showing taking for public purpose. — In order to recover from a county for a taking, the plaintiff must show that the taking was done for a public purpose of the county; however, nothing appearing to the contrary, the allegation that the county took the property as part of a right of way for a road and street within the municipality and while acting in the conduct of the county's business sufficiently alleged the right of the county to condemn the land in question. *McGhee v. Floyd County*, 95 Ga. App. 221, 97 S.E.2d 529 (1957) (decided under former Code 1933, Chs. 23-6, 95-2).

Taking need not be for public necessity. — It is not necessary to show that the proposed alteration in the road is a public necessity; it is sufficient to show that it is of public utility. *Barnard v. Durrence*, 22 Ga. App. 8, 95 S.E. 372 (1918) (decided under former Code 1910, § 640).

3. Verdict and Appeal

Proper to exclude evidence of price paid for nearby land. — It was not error to exclude from evidence a deed offered by the condemnee to show the price the condemnor paid for land located in alleged close proximity to that of the condemnee. *Garden Parks v. Fulton County*, 88 Ga. App. 97, 76 S.E.2d 31 (1953) (decided under former Code 1933, § 36-1001).

No instructions about condemnation benefits if evidence shows only damage. — When the condemnee introduced evidence to show that, because of the condemnation, the condemnee would be required to expend certain amounts on fences, screening hedges, and grading, and thus would be consequentially damaged, and there was no evidence as to any consequential benefits resulting from the improvement, the evidence did not authorize a charge on consequential benefits. *Garden Parks v. Fulton County*, 88 Ga.

App. 97, 76 S.E.2d 31 (1953) (decided under former Code 1933, § 36-1001).

No double award for taking and access loss. — When the state has specifically condemned access rights to a proposed highway, and when the highway will result in a loss of access to part of the condemnee's land, a charge which designates the condemnation of access rights as an element of compensation for the taking and the loss of access as an element of consequential damages, does not authorize a double award for the same thing. *State Hwy. Dep't v. Price*, 123 Ga. App. 655, 182 S.E.2d 175 (1971) (decided under former Ga. L. 1961, p. 517).

Equity court, not jury, determines legality of condemnation. — In condemnation proceedings, the only issue before the assessors or a jury on appeal is the amount of compensation to be paid, and neither the assessors nor a jury can determine whether the condemnor is proceeding legally; the remedy of the landowners is to apply to a court of equity to enjoin the illegal proceedings. *Garden Parks v. Fulton County*, 88 Ga. App. 97, 76 S.E.2d 31 (1953) (decided under former Ga. L. 1961, p. 517).

Prerequisites for vacating judgment for property value. — Affirmative action seeking to set aside judgment in favor of condemnor, and payment of all expenses and damages accrued to the condemnee, are essential to the vacating

and setting aside of a judgment for the value of property condemned. *Marist Soc'y v. City of Atlanta*, 212 Ga. 115, 90 S.E.2d 564 (1955) (decided under former Ga. L. 1955, p. 559).

Previous donation by condemnee. — Since previous donation by condemnee had no relevance to the determination of the amount of just and adequate compensation for the property taken, references by condemnee's president to that previous donation as having been "forced" and "coerced" implied that condemnor had acted in bad faith; thus, the testimony by condemnee's president was both irrelevant and prejudicial. *DOT v. Ultima-Trimble, Ltd.*, 204 Ga. App. 309, 418 S.E.2d 820 (1992).

Comparable sales properly considered. — Jury was authorized to determine that evidence of comparable sales in the area of a landowner's land, even though higher than the landowner's expert's opinion of the market value of the acreage, reasonably established the value of the land, and it could fix the market value of the land higher or lower than that amount asserted by an expert, provided that the jury's verdict was not so disparate as to justify an inference of gross mistake or undue bias; thus, when the evidence supported the jury's award, there was no inference that it was the result of gross mistake or undue bias. *DOT v. Brannan*, 278 Ga. App. 717, 629 S.E.2d 481 (2006).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, §§ 95-2904 and 95-2907, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section.

No expenditure of money on historic preservation if not for transportation. — Department of Transportation may expend federal and state funds on transportation enhancement activities as defined in 23 U.S.C. § 101(a) in those instances where the Code of Public Transportation gives the department the authority to expend such funds, but the Department of Transportation has no au-

thority to expend federal or state money on historic preservation, rehabilitation and operation of historic transportation buildings, structures, or facilities (including historic railroad facilities and canals) when such buildings, structures, or facilities are not being acquired for transportation purposes. 1993 Op. Att'y Gen. No. 93-3 (decided prior to 1993 amendment of § 32-1-3).

License for department to build retaining wall on slope easement. — Department of Transportation is responsible for acquiring the proper permission from a property owner in the form of a license to erect a retaining wall upon a slope easement; after permission is ac-

quired, a wall may be erected and the original license is converted into an easement by operation of law; permission for the erection of retaining walls should be in writing so that a court need not make a

factual determination as to whether permission was granted. 1971 Op. Att'y Gen. No. 71-165 (decided under former Code 1933, §§ 95-2904, 95-2907).

RESEARCH REFERENCES

ALR. — Constitutionality of statute or ordinance denying right of property owners to defeat a proposed street improvement by protest, 52 ALR 883.

Eminent domain: possibility of overcoming specific obstacles to contemplated use as element in determining existence of necessary public use, 22 ALR4th 840.

32-3-2. Acquisition procedure generally; recording order and judgment or instrument of conveyance; filing order and judgment or instrument in records of department.

All acquisition of property or interests for public road and other transportation purposes shall proceed under the methods set out in this article and in Title 22. Any instrument which conveys such property or interest to or any order and judgment which vests such property or interest in a state agency, county, or municipality shall be recorded in the name of the agency, county, or municipality in each county wherein the property or interest may lie, notwithstanding Code Section 50-16-3. In the case of property or interests acquired by the department, the instrument or order and judgment shall also be kept in the records of the department. Article 1 of Chapter 6 of Title 48 shall not apply to property or interests acquired under the authority of this article. (Code 1933, § 95A-602, enacted by Ga. L. 1973, p. 947, § 1.)

Law reviews. — For comment on *Southern Ry. v. State Hwy. Dep't*, 219 Ga.

435, 134 S.E.2d 12 (1963), see 1 Ga. St. B.J. 242 (1964).

JUDICIAL DECISIONS

Cited in *Citizens Coalition for Planned Growth, Inc. v. Glynn County*, 249 Ga. 664, 292 S.E.2d 847 (1982); *DOT v. City of*

Atlanta, 255 Ga. 124, 337 S.E.2d 327 (1985).

RESEARCH REFERENCES

ALR. — Power of eminent domain as between state and subdivision or agency thereof, or as between different subdivi-

sions or agencies themselves, 35 ALR3d 1293.

32-3-3. Acquisition of property by devise, exchange, prescription, or dedication; acquisition by county or municipality on behalf of department.

(a) The department or any county or municipality is authorized to accept donations, transfers, or devises of land from private persons, from the federal government, or from other state agencies, counties, or municipalities, provided that such land is suitable for present or future public road purposes. Any property may be so acquired in fee or any lesser interest, provided that the state agency, county, or municipality thereby obtains an interest sufficient to ensure reasonable protection of the public investment which it may thereafter make in such land. The instrument which conveys such property or interest shall be recorded in the county or counties where such property or interest lies and, in the case of property or interests acquired by the department, shall also be kept in the records of the department.

(b) Any state agency, county, or municipality is authorized, for public road purposes, to enter into agreements with other state agencies, counties, or municipalities, with the federal government, and with private persons for the exchange of real property or interests therein for public road purposes. Such exchange shall not be consummated unless the exchange serves the best interest of the public and unless the property or interest to be acquired in exchange is appraised as being of equal value to, or of greater value than, the property or interest to be exchanged.

(c) Notwithstanding Code Section 44-5-163, any state agency, county, or municipality is authorized to acquire by prescription and to incorporate into its system of public roads any road on private land which has come to be a public road by the exercise of unlimited public use for the preceding seven years or more.

(d) Any state agency, county, or municipality may acquire rights of way or other real property or interests therein by dedication, provided that the property or interests are adequate for public road purposes and serve the best interests of the public; provided, further, that the agency, county, or municipality receives a warranty deed, except where the property or interest is acquired from a state or federal agency, a county, or a municipality, in which case, where legally possible, a warranty deed shall be received; but, if it is not legally possible to receive a warranty deed, then a quitclaim deed shall be received.

(e) When a road is approved as part of the state highway system, it shall be the duty of the county or municipality through which the road will pass to assist the department in procuring the necessary rights of way as economically as possible; and all expenses thereof shall be paid as provided in Code Section 32-5-25, provided that, whenever the

county or municipality acquires property or interests for the department, title to such property or interest may be acquired in the name of the department. (Code 1933, § 95A-602, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1982, p. 3, § 32.)

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

PRESCRIPTION

DEDICATION

DIFFERENCES BETWEEN DEDICATION AND PRESCRIPTION

PROCURING RIGHTS OF WAY

General Consideration

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Civil Code 1895, § 509 and former Code 1933, §§ 85-410 and 95-1721, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section.

Intergovernmental exchanges not governed by disposal provisions. — An exchange of condemned property between the Department of Transportation and a county did not require application of the notice requirements and repurchase rights of O.C.G.A. § 32-7-4. *Swims v. Fulton County*, 267 Ga. 94, 475 S.E.2d 597 (1996).

Construction. — Phrase "adequate for public road purposes" in O.C.G.A. § 32-3-3(d) did not mean that the property presently had to have a road constructed on it that met certain engineering standards, but that, in a general sense, the property to be acquired must have been suitable or adequate for accommodating a public road. *Rabun County v. Mt. Creek Estates, LLC*, 280 Ga. 855, 632 S.E.2d 140 (2006).

Cited in *DOT v. Ridley*, 149 Ga. App. 16, 253 S.E.2d 563 (1979); *Citizens Coalition for Planned Growth, Inc. v. Glynn County*, 249 Ga. 664, 292 S.E.2d 847 (1982); *DOT v. City of Atlanta*, 255 Ga. 124, 337 S.E.2d 327 (1985).

Prescription

Creation of public road. — Under the common law, a public road may come into

existence by prescription. *Southern Ry. v. Combs*, 124 Ga. 1004, 53 S.E. 508 (1906) (decided under former Civil Code 1895, § 509).

Since a private road had been blocked and impassable for more than 10 years, there could not have been continuous use of the road for 7 years and, therefore, there could be no prescriptive rights in the road. *Chandler v. Robinson*, 269 Ga. 881, 506 S.E.2d 121 (1998), overruled on other grounds, *Stinski v. State*, 281 Ga. 783, 642 S.E.2d 1 (2007).

Road obtained by prescription becomes public. — Public road can come into existence by public use and public work, and when such use and work are continuous for 20 years, it is certainly a public road, so far as the right of the people to use the road as a highway is concerned. *Dunaway v. Windsor*, 197 Ga. 705, 30 S.E.2d 627 (1944) (decided under former Code 1933, § 85-410).

Mandamus to require county to maintain road. — Group of landowners were properly granted mandamus relief requiring a county to maintain an adjacent road as the county acquired title to the road by prescriptive acquisition, abandonment was not an issue, and compliance with O.C.G.A. § 32-3-3(c) did not need to be shown when a roadway was otherwise acquired by prescription; moreover, urging that a county's failure to meet the county's obligation to maintain public roads was an acceptable method of abandoning a roadway would encourage counties to disregard their public duty. *Shearin v. Wayne Davis & Co., P.C.*, 281 Ga. 385, 637 S.E.2d 679 (2006).

Dedication

Highway may come into existence by dedication. *Dunaway v. Windsor*, 197 Ga. 705, 30 S.E.2d 627 (1944) (decided under former Code 1933, § 85-410).

Highway may under certain circumstances be implied. *Dunaway v. Windsor*, 197 Ga. 705, 30 S.E.2d 627 (1944) (decided under former Code 1933, § 85-410).

Owner's intention to dedicate property to public use must be shown, whether express or implied. *Dunaway v. Windsor*, 197 Ga. 705, 30 S.E.2d 627 (1944) (decided under former Code 1933, § 85-410).

Dedication may be written, by parol, inferred, or implied. — Dedication may be made in writing, or by parol; or dedication may be inferred from acts, or implied, in certain cases, from long use. *Dunaway v. Windsor*, 197 Ga. 705, 30 S.E.2d 627 (1944) (decided under former Code 1933, § 85-410).

Dedication by acts showing assent to public use. — Intention to dedicate property to public use is essential to a dedication, but this may be proved by acts showing an assent that property should be so used and enjoyed. *Dunaway v. Windsor*, 197 Ga. 705, 30 S.E.2d 627 (1944) (decided under former Code 1933, § 85-410).

Acts must show unambiguous intent to abandon. — When an established dedication is claimed, the acts relied on to establish the dedication must be such as to clearly and satisfactorily indicate a purpose on the part of the owner to abandon the owner's personal dominion over the property and to devote the property to a definite public use. *Dunaway v. Windsor*, 197 Ga. 705, 30 S.E.2d 627 (1944) (decided under former Code 1933, § 85-410).

In order to constitute a dedication of land to public uses, an intention on the part of the owner to abandon the use of the land to the public must be shown by proof of unequivocal and unambiguous words or acts of such owner; the circumstances must be such as to show a clear assent to such dedication. *Dunaway v. Windsor*, 197 Ga. 705, 30 S.E.2d 627 (1944) (decided under former Code 1933, § 85-410).

Inference from owner's acquiescence implies knowledge of public claim. — While an intention to dedicate need not be shown by an express declaration to that effect, but may be inferred under certain circumstances from an acquiescence by the owner in the use of the owner's property by the public, such acquiescence is in the nature of an estoppel in pais, and implies a knowledge on the part of the owner of the claim by the public to the right to appropriate the owner's property to the public use. *Dunaway v. Windsor*, 197 Ga. 705, 30 S.E.2d 627 (1944) (decided under former Code 1933, § 85-410).

Occasional public roadwork does not prove presumptive dedication. — Occasional road-working of property by public authorities, there being no other evidence of maintenance, is not of itself sufficient to create the presumption of an intention to dedicate; the use and maintenance must be of the character and for the length of time sufficient to create a presumptive right of the public therein. *Dunaway v. Windsor*, 197 Ga. 705, 30 S.E.2d 627 (1944) (decided under former Code 1933, § 85-410).

Retention of dominion despite public use. — Mere fact that the public uses the property of a private individual is not necessarily inconsistent with the retention of dominion by the owner. *Dunaway v. Windsor*, 197 Ga. 705, 30 S.E.2d 627 (1944) (decided under former Code 1933, § 85-410).

Mere use of one's property by a small portion of the public, even for an extended period of time, is not sufficient to authorize an inference that the property has been dedicated to a public use, unless it clearly appears that there was an intention to dedicate, and that this dedication was accepted by the public authorities, either in express terms or by implication resulting from the maintenance of a way public in its nature. *Dunaway v. Windsor*, 197 Ga. 705, 30 S.E.2d 627 (1944) (decided under former Code 1933, § 85-410).

Failure to act in isolated instances. — Acquiescence cannot be effective to deprive the owner of the owner's property when the claimed acquiescence amounts to no more than a failure to protest in

Dedication (Cont'd)

isolated instances when some members of the public travel over the owner's land. *Dunaway v. Windsor*, 197 Ga. 705, 30 S.E.2d 627 (1944) (decided under former Code 1933, § 85-410).

Period must be long enough to presume gift. — In every case of an implied dedication it must appear that the property has been in the exclusive control of the public for a period long enough to raise the presumption of a gift. *Dunaway v. Windsor*, 197 Ga. 705, 30 S.E.2d 627 (1944) (decided under former Code 1933, § 85-410).

Differences Between Dedication and Prescription

Dedication implies conveyance and acceptance, while prescription requires unbroken possession or use under claim of right. *Dunaway v. Windsor*, 197 Ga. 705, 30 S.E.2d 627 (1944) (decided under former Code 1933, § 85-410).

Prescription requires public use for 20 years. — Before a highway can be established by prescription, it must appear that the general public, under a claim of right, and not by mere permission of the owner, used some defined way without interruption or substantial change, for a period of 20 years or more; the use must not only be adverse, but the use must be continuous and uninterrupted, although it is not every slight or occasional use of the land by the owner that will constitute an interruption of the public use. *Dunaway v. Windsor*, 197 Ga. 705, 30 S.E.2d 627 (1944) (decided under former

Code 1933, § 85-410).

Uninterrupted adverse use under claim of right. — When there is no other evidence against the owner to support a dedication but the mere fact of such use, so that the right claimed by the public is purely prescriptive, it is essential, to maintain it, that the use or enjoyment should be adverse, that is with a claim of right, and uninterrupted and exclusive for the requisite length of time. *Dunaway v. Windsor*, 197 Ga. 705, 30 S.E.2d 627 (1944) (decided under former Code 1933, § 85-410).

Less use needed for dedication than for prescription. — Since there was no intention to dedicate, but the public has taken possession of the property of an individual, and used and maintained the property as a highway for a period of 20 years or more, a highway by prescription becomes complete; when there was an intention to dedicate, the maintenance of a way for a less time will bring into existence a completed highway by dedication. *Dunaway v. Windsor*, 197 Ga. 705, 30 S.E.2d 627 (1944) (decided under former Code 1933, § 85-410).

Procuring Rights of Way

County must negotiate with owner. — Negotiations by a county authority, procuring rights-of-way for roads in the name of the State Highway Department (now Department of Transportation) in an effort to agree with the owner of the property to be taken are not only authorized, but are required. *Miller v. State Hwy. Dep't*, 200 Ga. 485, 37 S.E.2d 365 (1946) (decided under former Code 1933, § 95-1721).

OPINIONS OF THE ATTORNEY GENERAL

No transfer tax on property acquired by Department of Transportation. — Tax on transfer of real property does not apply to property acquired by Department of Transportation. 1974 Op. Att'y Gen. No. U74-56.

What property may be exchanged. — DOT may only exchange real property for real property and may not include any exchange of money or other personal property in such an exchange. 1992 Op. Att'y Gen. No. 92-8.

RESEARCH REFERENCES

ALR. — Reservation of right of way for railroad or street railway in dedicating property for highway, 43 ALR 766; 131 ALR 1472.

Constitutionality of statute or ordinance denying right of property owners to defeat a proposed street improvement by protest, 52 ALR 883.

Validity and effect of conditions or covenants in deed of property for streets relating to the use of the property or the street, 69 ALR 1047.

Dedication: acceptance of some of

streets, alleys, and the like appearing on plat as acceptance of all, 32 ALR2d 953.

Width and boundaries of public highway acquired by prescription or adverse use, 76 ALR2d 535.

Relative rights and liabilities of abutting owners and public authorities in parkways in center of street, 81 ALR2d 1436.

Power of eminent domain as between state and subdivision or agency thereof, or as between different subdivisions or agencies themselves, 35 ALR3d 1293.

32-3-4. Authority to bring condemnation proceedings.

(a) Whenever any state agency, county, or municipality desires to take or damage private property, including scenic easements, air rights, rights of access, and other interests in land for public road purposes or for any other public transportation purposes and shall find or believe, concerning which the decision of the condemning authority shall be final and conclusive, that the title of the apparent or presumptive owner of such property is defective, doubtful, incomplete, or in controversy, or that there are or may be unknown persons or nonresidents who have or may have some claim or demand thereon or some actual or contingent interest or estate therein, or that there are minors or persons under disability who are or may be interested therein, or that there are taxes due or that should be paid thereon, or shall for any reason conclude that it is desirable to have a judicial ascertainment of any question connected with the matter, such state agency, county, or municipality, through any authorized representative, may file a proceeding in rem in the superior court of the county having jurisdiction condemning the property or interests to the use of the petitioner upon payment of just and adequate compensation therefor to the person or persons entitled to such payment.

(b) When the acquisition of public property or an interest therein is necessary for public road purposes, including limited-access roads provided for by Article 4 of Chapter 6 of this title, the department may acquire such public property or interest therein by condemnation and the power of eminent domain when such acquisition is approved by the State Commission on the Condemnation of Public Property as provided in Code Section 50-16-183. The procedures for the condemnation of property provided for in this Code section and Code Sections 32-3-5 through 32-3-19 of this article and the procedures provided for the condemnation of property in Article 3 of Chapter 2 of Title 22 and the procedures provided for the condemnation of property in Article 2 of

Chapter 2 of Title 22 when the property sought is a public cemetery shall apply to the condemnation of public property or an interest therein by the department. As used in this subsection, the term "public property" has the meaning provided for in Code Section 50-16-180. (Code 1933, § 95A-603, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1979, p. 973, § 4; Ga. L. 1982, p. 3, § 32; Ga. L. 1986, p. 1187, § 4.)

Law reviews. — For annual survey of local government law, see 38 Mercer L. Rev. 289 (1986). For article, "Condemning Local Government Condemnation," see 39

Mercer L. Rev. 11 (1987). For annual survey on real property law, see 61 Mercer L. Rev. 301 (2009).

JUDICIAL DECISIONS

Choice of condemnation procedures. — Even though the title to property to be condemned for transportation purposes was not in question, a city could choose to use procedures set forth in O.C.G.A. § 32-3-4 and, although the city could have done so, was not required to use the procedures set forth in O.C.G.A. § 22-2-1 et seq. *Back v. City of Warner Robins*, 217 Ga. App. 326, 457 S.E.2d 582 (1995).

Definition of "owners." — Word "owners" as used in this statutory scheme means all parties having an interest in the subject land, whether their claims be based on a warranty deed, security deed, filed lis pendens notice, or other statutory lien. *DOT v. Olshan*, 237 Ga. 213, 227 S.E.2d 349 (1976).

Land condemnable in one proceeding. — If the ownership rights of any one with an interest in the land attaches to one tract of land in its entirety, regardless of the extent of the claims of the other "owners," the tract of land can be condemned in a single in rem action. *DOT v. Olshan*, 237 Ga. 213, 227 S.E.2d 349 (1976); *DOT v. Kenney*, 238 Ga. 173, 231 S.E.2d 767 (1977).

No compensation for traffic pattern change. — Compensation for a change in the traffic pattern on the road adjacent to the condemnees' property is not recoverable. *DOT v. Katz*, 169 Ga. App. 310, 312 S.E.2d 635 (1983).

Department of Transportation's exercise of eminent domain powers. — Department of Transportation may not exercise eminent domain powers over municipally owned property as the legisla-

ture has not clearly granted such authority or created a procedure therefore, and as such grant may not be implied from statutory provisions generally establishing a procedure for state agencies to condemn "private property." *DOT v. City of Atlanta*, 255 Ga. 124, 337 S.E.2d 327 (1985) (decided prior to the 1986 amendment, which added subsection (b)).

Admission of deeds of sale on other properties as direct evidence of valuation. — In a condemnation action wherein a county challenged the valuation placed on the landowner's property, the trial court did not abuse the court's discretion by allowing the admission of four deeds of sale on other properties as direct evidence of the condemned property's value since a proper foundation was laid for the deeds and dissimilarities in the land went to the weight of the evidence of the deeds, not the admissibility of the deeds. *Henry County v. RJR Mgmt. One, LLC*, 290 Ga. App. 241, 659 S.E.2d 676 (2008).

Trial court erred in dismissing the Georgia Department of Transportation's (DOT's) condemnation petition for the department's failure to submit a properly attested affidavit with the department's petition as the condemnees were estopped from challenging the taking of the condemnees' property because the condemnees withdrew the money deposited by DOT in the court registry. *Ga. DOT v. Bowles*, 292 Ga. App. 829, 666 S.E.2d 92 (2008).

Cited in *Chamlee v. DOT*, 189 Ga. App. 334, 375 S.E.2d 626 (1988).

RESEARCH REFERENCES

Am. Jur. 2d. — 26 Am. Jur. 2d, Eminent Domain, §§ 54, 69, 70.

C.J.S. — 29A C.J.S., Eminent Domain, §§ 32, 33, 100, 101, 107 et seq.

32-3-5. Contents of condemnation petition; notice.

- (a) The petition referred to in Code Section 32-3-4 shall set forth:
 - (1) The facts showing the right to condemn;
 - (2) The property or interests to be taken or damaged;
 - (3) The names and residences of the persons whose property or interests are to be taken or otherwise affected, so far as known;
 - (4) Descriptions of the persons or classes of unknown persons whose rights therein are to be excluded or otherwise affected;
 - (5) Such other facts as are necessary for a full understanding of the cause;
 - (6) A prayer for the judgment of the court in accordance with Code Section 32-3-13 or 32-3-19; and
 - (7) The date of the approval of the original location of the highway.
- (b) If any of the persons referred to in the petition are, so far as may be known, minors or under disability, that fact shall be stated.
- (c) It shall be the duty of the condemning authority, within 30 days from the date of the original approval and designation of said location as a highway, to cause the location of said highway in said county to be advertised once each week for four consecutive weeks in the newspaper of the county in which the sheriff's advertisements are carried; and said advertisement shall designate the land lots or land districts of said county through which such highway will be located. Said advertisement shall further show the date of the original location of such highway as provided for in this subsection. Said advertisement shall further state that a plat or map of the project showing the exact date of the original location is on file at the office of the Department of Transportation and that any interested party may obtain a copy of same by writing to the Department of Transportation and paying a nominal cost therefor. (Code 1933, § 95A-604, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1998, p. 1539, § 10.)

Law reviews. — For review of 1998 legislation relating to eminent domain, see 15 Ga. St. U.L. Rev. 115 (1998). For annual survey on real property law, see 61 Mercer L. Rev. 301 (2009).

JUDICIAL DECISIONS

Necessity of taking is presumed. — O.C.G.A. § 32-3-5 does not require the condemnor in its condemnation to establish the necessity of condemning the particular property taken; necessity is presumed, and the presumption is rebutted only by a showing by the condemnee of fraud or bad faith by the condemnor in its decision to condemn the land. *West v. DOT*, 176 Ga. App. 806, 338 S.E.2d 45 (1985).

Descriptions sufficiently clear to allow proof of damages. — When the notice clearly described and depicted the easement areas and specified the permanent nature of the easements, the descriptions were sufficiently clear to allow proof of damages. *Skipper v. DOT*, 197 Ga. App. 634, 399 S.E.2d 538 (1990).

Property or interests to be taken or damaged. — Court did not abuse the court's discretion when the court directed the Department of Transportation as condemnor to recast the department's declaration of taking to include reasonably foreseeable personalty and fixtures. *DOT v. Whitfield*, 233 Ga. App. 747, 505 S.E.2d 247 (1998).

Cited in *DOT v. Olshan*, 237 Ga. 213, 227 S.E.2d 349 (1976); *Robinson v. DOT*, 185 Ga. App. 597, 364 S.E.2d 884 (1988); *DOT v. Morris*, 186 Ga. App. 673, 368 S.E.2d 155 (1988); *Bates & Assocs. v. Department of Transp.*, 186 Ga. App. 828, 368 S.E.2d 544 (1988); *DOT v. Whitfield*, 233 Ga. App. 747, 505 S.E.2d 247 (1998).

32-3-6. Filing declaration of taking; contents of and attachments to declaration; conclusive nature of order of condemnation by condemning authority.

(a) In addition to the petition filed pursuant to Code Section 32-3-4, the petitioner shall also file with the court a declaration of taking signed by:

(1) The commissioner or the deputy commissioner of the Department of Transportation if the petitioner is seeking to acquire property or interests on behalf of the department;

(2) The county governing authority if the petitioner is seeking to condemn for county road system purposes or any other public transportation purpose; or

(3) The municipal governing authority if the petitioner is seeking to condemn for municipal street system purposes or any other public transportation purpose.

(b) The declaration of taking shall declare that the lands are being taken for the use of the condemnor, subject to the order of the court provided for in Code Section 32-3-12. The declaration shall contain or have annexed thereto:

(1) A statement of the authority under which, and the public use for which, such lands are taken;

(2) A description of the lands taken sufficient for the identification thereof;

(3) A statement of the estate or interest in the lands taken for public use;

(4) A plat showing the lands taken;

(5) A statement of the sum of money estimated by the condemning authority to be just compensation for the land taken, including consequential damages to land not taken, accompanied by a sworn copy as an exhibit of the appraiser's statement justifying the sum; and

(6) A certified copy of an order by the commissioner if the property or interest is being condemned for the department or by the county or municipality if the property or interest is being condemned for a county or municipality, finding that the circumstances are such that it is necessary to proceed in the particular case under this article, and specifically authorizing condemnation under this article.

(c) Such an order of the commissioner or governing authority shall be conclusive as to the use of the property or interest condemned and as to the authority of the commissioner or governing authority to condemn under this article. (Code 1933, § 95A-605, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1974, p. 1422, § 15; Ga. L. 1975, p. 813, § 1; Ga. L. 1979, p. 973, § 5.)

Law reviews. — For annual survey on real property law, see 61 Mercer L. Rev. 301 (2009).

JUDICIAL DECISIONS

Condemnor must prove just and adequate compensation. — Condemnor has the burden of proving just and adequate compensation in condemnation cases, but once the condemnor has established a prima facie case, the burden is on the condemnee to produce overcoming evidence when the condemnor asserts greater value or damage. *West v. DOT*, 176 Ga. App. 806, 338 S.E.2d 45 (1985).

Condemnor must show declaration of taking method was necessary. — City's declaration of taking violated O.C.G.A. § 32-3-6(b)(6) and, consequently, could not vest title in the city; the declaration of taking method could not have been necessary or essential, as required by the statute, when the city council also contemplated and specifically authorized use of an alternative method. *City of Atlanta v. Yusen Air & Sea Serv.*

Holdings Inc., 263 Ga. App. 82, 587 S.E.2d 230 (2003).

Easement not adequately described. — When the Department of Transportation filed a declaration of taking pursuant to O.C.G.A. § 32-3-1 et seq., which included the taking of a temporary work easement to be used in the demolition of a building on condemned property, the department did not adequately describe the easement as the department's plat attached to the department's declaration did not describe the easement, and there was no description of the easement's width nor any limitation regarding a pathway which had to be used when traversing land not condemned; the issue was not rendered moot by the fact that the condemnees did not obtain a stay pending appeal and the work was completed during the appeal's pendency because

O.C.G.A. § 32-3-17.1 authorized a trial court to order a condemnor to amend a defective declaration of taking. *Ga. 400 Indus. Park, Inc. v. DOT*, 274 Ga. App. 153, 616 S.E.2d 903 (2005).

Affidavit as to just compensation not an admission of fact. — Department of Transportation's affidavit filed pursuant to paragraph (b)(5) of O.C.G.A. § 32-3-6 did not constitute an admission of fact which would be admissible against the Department of Transportation in the condemnee's appeal pursuant to O.C.G.A. § 32-3-14. *Aiken v. Department of Transp.*, 171 Ga. App. 154, 319 S.E.2d 58 (1984).

Failure to allow impeachment of state appraiser warrants new trial. — Condemnees were entitled to a new trial in a Georgia Department of Transportation (DOT) condemnation proceeding; the trial court erred in refusing to allow impeachment of the DOT expert with the disparity between the expert's pretrial estimate of just compensation (JC) and the higher estimate the expert gave at trial as impeachment might have convinced the jury to award JC closer to the higher JC estimate of the condemnees' expert. *Steele v. DOT*, 295 Ga. App. 244, 671 S.E.2d 275 (2008).

Condemnor not bound by original estimate upon condemnee's appeal. —

If a condemnee is dissatisfied with the compensation originally estimated by the condemnor and elects to appeal that issue to a jury, the condemnor is not bound by the condemnor's original estimate but can present evidence de novo as to fair market value and consequential damages. *Morrison v. DOT*, 166 Ga. App. 144, 303 S.E.2d 501 (1983); *Aiken v. Department of Transp.*, 171 Ga. App. 154, 319 S.E.2d 58 (1984).

Right to attorney fees in condemnation proceeding. — Party in condemnation proceeding acquired no vested right in attorney fees awarded to the attorney through the judgment of the trial court. *DOT v. Kendricks*, 244 Ga. 613, 261 S.E.2d 391 (1979).

Cited in *DOT v. Lurie*, 138 Ga. App. 9, 225 S.E.2d 687 (1976); *Coffee v. Atkinson County*, 236 Ga. 248, 223 S.E.2d 648 (1976); *Morgan v. Department of Transp.*, 239 Ga. 560, 238 S.E.2d 95 (1977); *DOT v. Worley*, 150 Ga. App. 768, 258 S.E.2d 595 (1979); *DOT v. Harrison*, 154 Ga. App. 118, 267 S.E.2d 651 (1980); *DOT v. Rudeseal*, 156 Ga. App. 712, 276 S.E.2d 52 (1980).

OPINIONS OF THE ATTORNEY GENERAL

Right to interest in condemnation proceeding. — Right to receive interest as part of just and adequate compensation vests on date of taking, which is the day

the declaration of taking, accompanied by the payment of just and adequate compensation, is filed in a superior court. 1980 Op. Att'y Gen. No. 80-100.

32-3-7. Deposit of estimated compensation; vesting of title in condemning authority; protection of due process rights.

(a) Upon the filing of the declaration of taking and the deposit into court, which deposit shall be made at the time the declaration of taking is filed to the use of the persons entitled thereto, of the sum of money estimated in the declaration by the condemning authority to be just compensation, title to the property in fee simple absolute or such lesser interest as is specified in the declaration shall vest in the condemnor; the land shall be deemed to be condemned and taken for the use of the condemnor; and the right to just compensation for the same shall vest in the persons entitled thereto.

(b) Nothing in this Code section shall be construed so as to deprive the owner of the property or interest of due process of law as guaranteed by the Constitutions of Georgia and of the United States. (Code 1933, § 95A-605, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1982, p. 3, § 32.)

JUDICIAL DECISIONS

Effect of petition. — Petition is not mere pleading but instrument which passes title when filed and just and adequate compensation is paid into the court under O.C.G.A. § 32-3-7. *Dorsey v. DOT*, 248 Ga. 34, 279 S.E.2d 707 (1981).

Standing. — Temporary administratrix, who was also the wife of the decedent landowner, had standing as a party to the action for the recovery of just compensation for land taken by the Department of Transportation in a condemnation proceeding. *DOT v. Foster*, 262 Ga. App. 524, 586 S.E.2d 64 (2003).

Open Records Law. — "Property has been acquired" for purposes of the Open Records Law, O.C.G.A. § 50-18-70 et seq., exemption only after condemnation proceedings, including any litigation, have been completed. *Black v. Georgia DOT*, 262 Ga. 342, 417 S.E.2d 655 (1992).

Effect of omission of commencement date. — Department of Transportation's omission of the commencement date of the temporary construction easement the department sought to condemn did not render the declaration of taking invalid; as a matter of law, the commencement date for the temporary construction easement is the date of the taking. *Habersham Downs Homeowners' Ass'n v. DOT*, 212 Ga. App. 686, 442 S.E.2d 868 (1994).

Nonconforming declaration of taking cannot vest title in condemnor. — Declaration of taking which does not conform to the dictates of O.C.G.A. § 32-3-7 cannot vest title to the land in the condemnor. *Dorsey v. DOT*, 248 Ga. 34, 279 S.E.2d 707 (1981).

Vesting of title by amended declaration. — Amended declaration can only vest title in condemnor at time of amendment, and does not relate vesting back to the time of the original declaration. *Dorsey v. DOT*, 248 Ga. 34, 279 S.E.2d 707 (1981).

Amendment to justification of just and adequate compensation. — Along

with amendment to declaration, amendment to justification of just and adequate compensation should be filed by condemnor. *Dorsey v. DOT*, 248 Ga. 34, 279 S.E.2d 707 (1981).

Date of taking for determining land value or consequential damages. — For the purpose of determining the value of the land taken or consequential damages to land not taken, the condemnee shall have the right to elect whether the date of taking is the date of the filing of the original declaration of taking or the date of the filing of the amendment. *Dorsey v. DOT*, 248 Ga. 34, 279 S.E.2d 707 (1981).

Condemnee has no vested right in attorney fees granted by court. — Party in condemnation proceeding acquired no vested right in the attorney fees awarded to the party through the judgment of the trial court. *DOT v. Kendricks*, 244 Ga. 613, 261 S.E.2d 391 (1979).

Trial court does not have authority, under O.C.G.A. § 32-3-7, to require payment of reasonable and necessary attorney fees and expenses of litigation for proceedings before an appellate court of this state. *DOT v. Franco's Pizza & Delicatessen, Inc.*, 200 Ga. App. 723, 409 S.E.2d 281, cert. denied, 200 Ga. App. 895, 409 S.E.2d 281 (1991), overruled on other grounds, 264 Ga. 393, 444 S.E.2d 734 (1994).

Condemnation not required when no prior right of access. — Condemnor creating a limited access highway need not condemn a purported "right of access" where none has previously existed. *DOT v. Hardin*, 231 Ga. 359, 201 S.E.2d 441 (1973) (decided under former Ga. L. 1955, p. 559).

Cited in *DOT v. Lurie*, 138 Ga. App. 9, 225 S.E.2d 687 (1976); *Coffee v. Atkinson County*, 236 Ga. 248, 223 S.E.2d 648 (1976); *Morgan v. Department of Transp.*, 239 Ga. 560, 238 S.E.2d 95 (1977); *DOT v. Worley*, 150 Ga. App. 768, 258 S.E.2d 595

(1979); DOT v. Harrison, 154 Ga. App. 118, 267 S.E.2d 651 (1980); Blonder v. Department of Transp., 156 Ga. App. 711, 275 S.E.2d 762 (1980); DOT v. Delta Mach.

Prods. Co., 162 Ga. App. 252, 291 S.E.2d 104 (1982); Stephens v. Department of Transp., 170 Ga. App. 784, 318 S.E.2d 167 (1984).

OPINIONS OF THE ATTORNEY GENERAL

Right to interest in condemnation proceeding. — Right to receive interest as part of just and adequate compensation vests on date of taking, which is the day the declaration of taking, accompanied by the payment of just and adequate compensation, is filed in a superior court. 1980 Op. Att'y Gen. No. 80-100.

Surplus property, not to be placed in court registry. — Legislature intended that only money, and not surplus property, be placed into the court registry for satisfaction of any judgment resulting from a condemnation action. 1992 Op. Att'y Gen. No. 92-8.

RESEARCH REFERENCES

ALR. — Constitutionality of statute or ordinance denying right of property own-

ers to defeat a proposed street improvement by protest, 52 ALR 883.

32-3-8. Service of process in condemnation proceedings generally.

(a) Upon the filing of the petition and declaration, where the owner or owners of the property sought to be condemned or any person having a claim against or interest in the same are residents of this state, the petition and declaration shall be served upon such persons personally. In cases where such persons are residents of this state but not of the county in which such property or interest is located, such service shall be by second original, as in other cases.

(b) If the owner, or any of the owners, or any person having a claim against or interest in the property is a minor or under any disability whatsoever, such notice shall be served:

(1) Upon his or her guardian; and, if such guardian is a nonresident of this state, upon the judge of the probate court of the county in which the property or interest is located, who shall appoint a guardian ad litem to represent such minors or persons under disability in the litigation, provided that, if the nonresident guardian intervenes, he or she shall serve in lieu of the guardian ad litem; or

(2) If there is no guardian, personally upon the minor, where such minor is a resident of this state. If such minor is not a resident of the county where the property or interest is located, service shall be by second original, as is provided by law in other cases, and upon the judge of the probate court of the county where the property or interest is located, who shall appoint a guardian ad litem to represent the minor in the litigation.

(c) In subsection (b) of this Code section, if the judge of the probate court is disqualified, for reason of interest or other cause, notice shall be served upon the clerk of the superior court of the county, who shall appoint a guardian ad litem to represent the minor or person under disability.

(d) If the property or interest sought to be condemned is held in trust or if the condemnation is directed toward property in which remainders have been created, notice shall be served upon the trustee and also upon such persons as have an interest under the conveyance and who are of age, provided that, where any of the persons to be served are not residents of the county, such service shall be by second original, as in other cases.

(e) A copy of the petition and declaration shall be served upon the tax collecting authority of any county or municipality in which the property or interest may be located, who shall make known in writing the taxes due on the property or interest; and the court shall give such direction as will satisfy the same and discharge the lien thereon.

(f) In all instances, and in addition to the service provided for in this Code section, the condemnor shall, at the time of filing the petition and declaration of taking, cause a copy of such proceedings to be posted on the bulletin board at the courthouse. In addition thereto, such advertisement shall be published in the official newspaper of the county in which the property or interest is located, which notice shall describe the property or interest taken so as to identify the same and shall give the name or names of the owner or owners of such property or interest or persons having claims against such property or interest so far as the same may be known. Such notice shall be published in such newspaper once each week for two weeks subsequent to the filing of such petition and declaration. (Code 1933, § 95A-606, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 2004, p. 161, § 7.1.)

Cross references. — Service of process generally, § 9-11-4.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1882, § 606; former Civil Code 1895, § 520; and former Civil Code 1910, §§ 640 — 642, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section.

Effect of section on other section's definition of personal service. — Ga.

L. 1973, p. 947, § 1 (see O.C.G.A. § 32-3-8) requires that the petition and declaration shall be served personally, but personal service as defined in Ga. L. 1972, p. 689, §§ 1-3 (see O.C.G.A. § 9-11-4) is not in conflict with this requirement. *DOT v. Ridley*, 244 Ga. 49, 257 S.E.2d 511 (1979).

Condemnee's right to proper service until voluntary waiver. — Condemnees have a perfect right to waive

service and come in, but until the condemnees are properly served, and unless the record shows this fact by a proper return of service, the right remains until the right is voluntarily waived. *Knight v. Department of Transp.*, 134 Ga. App. 332, 214 S.E.2d 418 (1975).

No presumption of compliance. — Order of the commissioner authorizing the widening of a public road and reciting “that notice of such widening had been published as required by law” furnishes no evidence by presumption or otherwise that persons or agents, residing on the land through which such road goes, were notified in writing as required. *Fulton County v. Amorous*, 89 Ga. 614, 16 S.E. 201 (1892) (decided under former Code 1882, § 606).

Notice mandatory in condemnation. — If no notice is given as required, a petition to enjoin the condemnation of the land for the road should be sustained. *Commissioners of Roads & Revenues v. Curry*, 154 Ga. 378, 114 S.E. 341 (1922) (decided under former Civil Code 1910, § 642).

Injunction proper if notice not given. — It is error for the court to refuse to enjoin the county authorities from proceeding to condemn the land, there having been no compliance with former Civil Code 1910, § 640 et seq. *Ainslee v. County of Morgan*, 151 Ga. 82, 105 S.E. 836 (1921); *Mitchell County v. Hudspeth*, 151 Ga. 767, 108 S.E. 305 (1921); *Commissioners of Roads & Revenues v. Curry*, 154 Ga. 378, 114 S.E. 341 (1922) (decided under former Civil Code 1910, § 640).

Notice to agent insufficient. — When one purporting to be an agent of the owner of lands signs the application for establishing a road with the letters “agt.” after the individual’s name, this is an individual signature and will not deprive the owner of the owner’s right to notice. *Commissioners of Roads & Revenues v. Curry*, 154 Ga. 378, 114 S.E. 341 (1922) (decided under former Code 1019, § 642).

Lessee entitled to notice. — Lessee of property which was subjected to a partial taking was entitled to notice from the condemnor, not the lessor. *Sims v. Foss*, 201 Ga. App. 345, 411 S.E.2d 59 (1991).

Widening condemned property requires notice. — Since the evidence was undisputed that the road through the plaintiff’s premises was originally marked and laid out by the road commissioners, 20 feet in width, and that the county authorities were attempting to widen the road so as to embrace land of the plaintiff without first acquiring, in the manner prescribed by law, the right to do so, the court erred in refusing to enjoin the taking of a strip of the plaintiff’s land so as to widen the road beyond the limits originally marked out. *Buchanan v. James*, 130 Ga. 546, 61 S.E. 125 (1908) (decided under former Civil Code 1895, § 520).

Clerical error in notice not ground for dismissal. — Words in a notice, “said road to be 50 feet in length,” clearly appeared to be a clerical error, and, the length of the road otherwise appearing therein, it was proper to overrule a motion to dismiss the proceeding, based on the ground that the notice showed that the road was to be only 50 feet long, and for that reason could not be of public utility. *Anderson v. Howard*, 34 Ga. App. 292, 129 S.E. 567 (1925) (decided under former Civil Code 1910, § 642).

Timeliness of appeal. — Since the appeal was filed more than 30 days from the date of personal service, although less than 30 days from the completion of advertising as provided for in subsection (f) of this section, the appeal was not timely. *DOT v. Brooks*, 143 Ga. App. 872, 240 S.E.2d 163 (1977); *DOT v. Massengale*, 141 Ga. App. 70, 232 S.E.2d 608 (1977); *DOT v. Harrison*, 154 Ga. App. 118, 267 S.E.2d 651 (1980); *Blonder v. Department of Transp.*, 156 Ga. App. 711, 275 S.E.2d 762 (1980) (see O.C.G.A. § 32-3-8).

Cited in *Robinson v. DOT*, 185 Ga. App. 597, 364 S.E.2d 884 (1988); *DOT v. Morris*, 186 Ga. App. 673, 368 S.E.2d 155 (1988).

32-3-9. Service of nonresidents in condemnation proceedings.

(a) If a nonresident of this state owns the property condemned or any interest therein, whether such interest is as the owner of the fee or

some lesser interest, or any easement, or as a guardian for a minor or a person non compos mentis, or as a trustee, or growing out of similar facts, such nonresident, in the event that his or her address is known, shall be served with a true and correct copy of the petition and declaration, together with any orders of the court thereon. It shall be the duty of the clerk of the superior court for the county wherein such condemnation proceeding is pending to enclose a copy of the petition and declaration in an envelope, properly addressed to the nonresident at his or her last known address, and to deposit the same in the United States mail, properly registered or certified and with a return receipt requested, or deliver the same by statutory overnight delivery; and the clerk shall make a return service, showing these facts, upon the original petition and declaration in such matter for which he or she shall be paid the fee he or she receives for like service for each service made, the same to be taxed against the costs in the case. Such certificate of service shall be final and conclusive as to service of the petition upon the nonresident and shall become a part of the record in the matter.

(b) Where the address of the nonresident is unknown, whether such nonresident is the owner of the property, a minor, or the trustee or guardian of such minor or has any other lawful interest in the property, the method of advertising the condemnation of the particular property, as provided for in subsection (c) of Code Section 32-3-5, shall be sufficient service upon such nonresidents and shall be final and conclusive; provided, however, that, in that event, it shall be the duty of the condemnor, in filing the petition for condemnation, to certify that the address of such person or persons is unknown to the condemnor; provided, further, that it shall be the duty of the sheriff of the county wherein the condemnation is pending to inquire into the truth of such allegation and to enter a certificate upon the condemnation proceeding, within three days from the filing of the same, verifying the truth of the allegation. This certificate, together with the method of advertising of such condemnation proceedings provided for in the laws and statutes described above, shall be final and conclusive as to lawful service of the petition for condemnation upon the nonresident. For each such certificate, the sheriff shall receive the fee the sheriff receives for like service for each such certificate, the same to be taxed as other costs in the case. (Code 1933, § 95A-606, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1998, p. 1539, § 11; Ga. L. 2000, p. 1589, § 7.)

Editor's notes. — Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provided that the 2000 amendment was applicable to notices delivered on or after July 1, 2000.

Law reviews. — For review of 1998 legislation relating to eminent domain, see 15 Ga. St. U.L. Rev. 115 (1998).

JUDICIAL DECISIONS

Statutory construction. — Ga. L. 1973, p. 947, § 1 requires that the petition and declaration shall be served personally, but personal service as defined in Ga. L. 1972, p. 689, §§ 1-3 (see O.C.G.A. § 9-11-4) is not in conflict with this requirement. *DOT v. Ridley*, 244 Ga. 49, 257 S.E.2d 511 (1979).

Condemnee's right to proper service remains until waived. — Condemnees have a perfect right to waive service and come on in, but until the condemnees are properly served, and unless the record shows this fact by a proper return of service, the right remains until

the right is voluntarily waived. *Knight v. Department of Transp.*, 134 Ga. App. 332, 214 S.E.2d 418 (1975).

Timeliness of appeal. — When the appeal was filed more than 30 days from the date of personal service, although less than 30 days from the completion of advertising as provided for in O.C.G.A. § 32-3-8, the appeal was not timely. *DOT v. Brooks*, 143 Ga. App. 872, 240 S.E.2d 163 (1977).

Cited in *DOT v. Massengale*, 141 Ga. App. 70, 232 S.E.2d 608 (1977); *DOT v. Harrison*, 154 Ga. App. 118, 267 S.E.2d 651 (1980).

32-3-10. Substantial compliance with Code Sections 32-3-8 and 32-3-9.

(a) The proceeding described in this article being in rem, no provision in Code Sections 32-3-8 and 32-3-9 as to service shall be so construed as to invalidate the intent of the condemnor or as to delay the taking of the property or interest described in the declaration of taking and in the petition or in any manner as to delay the progress of the work for which the taking was made; and a substantial compliance with the provisions for service as heretofore set out in this article shall be deemed sufficient.

(b) At any stage of the cause before final verdict and judgment, the judge of the superior court may order such additional service to be made or such additional parties to be named as may be required by equity and justice; but this shall not be so construed as to invalidate the taking or delay the progress of the work. (Code 1933, § 95A-606, enacted by Ga. L. 1973, p. 947, § 1.)

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Civil Code 1985, § 520 and former Civil Code 1910, § 640, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section.

Statutory construction. — Ga. L. 1973, p. 947, § 1 requires that the petition and declaration be served personally, but personal service as defined in Ga. L. 1972, p. 689, §§ 1-3 does not conflict with this

requirement. *DOT v. Ridley*, 244 Ga. 49, 257 S.E.2d 511 (1979).

No injunction in advance of hearing if ample legal remedy. — As the landowner's remedy at law was ample, it was not erroneous to refuse to enjoin the county from continuing a proceeding in advance of the hearing provided for in former Civil Code 1895, § 641. *Atlanta & W.P.R.R. v. Redwine*, 123 Ga. 736, 51 S.E. 724 (1905); *Hutchinson v. Lowndes County*, 131 Ga. 637, 62 S.E. 1048 (1908); *Ballard v. Jones*, 148 Ga. 513, 97 S.E. 443

(1918) (decided under former Civil Code 1895, § 520 and former Civil Code 1910, § 640).

Condemnee's right to service unless voluntarily waived. — Condemnees have a perfect right to waive service and come in, but until the condemnees are properly served, and unless the record shows this fact by a proper return of service, the right remains until the right is voluntarily waived. *Knight v. Department of Transp.*, 134 Ga. App. 332, 214 S.E.2d 418 (1975).

Timeliness of appeal. — When the

appeal was filed more than 30 days from the date of personal service, although less than 30 days from the completion of advertising as provided for in Ga. L. 1973, p. 947, § 1, the appeal was not timely. *DOT v. Brooks*, 143 Ga. App. 872, 240 S.E.2d 163 (1977).

Cited in *DOT v. Massengale*, 141 Ga. App. 70, 232 S.E.2d 608 (1977); *DOT v. Harrison*, 154 Ga. App. 118, 267 S.E.2d 651 (1980); *Robinson v. DOT*, 185 Ga. App. 597, 364 S.E.2d 884 (1988); *DOT v. Morris*, 186 Ga. App. 673, 368 S.E.2d 155 (1988).

32-3-11. Power of judge to set aside, vacate, and annul declaration of taking; issuance and service on condemnor of rule nisi; hearing.

(a) Upon proper pleadings and evidence, under the applicable rules of law, the judge of the superior court shall have the authority to set aside, vacate, and annul the declaration of taking, together with any title acquired thereby, in the same way and manner and for the same reasons as are provided by Code Sections 23-2-60 and 9-11-60. The power of the court in this respect shall not be construed as extending to a determination of questions of necessity, but there shall be a prima-facie presumption that the property or interest condemned is taken for and is necessary to the public use provided for in this article.

(b) The power of the court as described in subsection (a) of this Code section shall be restricted to the following questions:

(1) Fraud or bad faith, as contemplated by Code Sections 23-2-60 and 9-11-60;

(2) The improper use of the powers of this article, such as are not contemplated by this article;

(3) The abuse or misuse of the powers of this article; and

(4) Such other questions as may properly be raised, including the question of whether or not this article has been invoked in some respect beyond the privileges conferred by this article or by an unauthorized agency, county, or municipality.

(c) If the condemnee desires to raise such questions as are outlined in subsection (b) of this Code section, the same shall be done by proper pleadings, in the form of a petition addressed to the judge of the superior court having jurisdiction thereof, filed in the same proceedings not later than 30 days subsequent to the date of service upon the condemnee of the declaration of taking. The presiding judge shall thereupon cause a rule nisi to be issued and served upon the condem-

nor, requiring him to show cause at a time and place designated by the judge why the title acquired by the declaration of taking should not be vacated and set aside in the same way and manner as is now provided for setting aside deeds acquired by fraud. Such hearing shall be had not earlier than 15 days from the time of service of the rule nisi upon the condemnor, nor later than 60 days from the date of filing of the declaration of taking, and with the right of appeal by either party, as in other cases. (Code 1933, § 95A-607, enacted by Ga. L. 1973, p. 947, § 1.)

Law reviews. — For annual survey of zoning and land use law, see 57 Mercer L. Rev. 447 (2005). For annual survey of

zoning and land use law, see 58 Mercer L. Rev. 477 (2006).

JUDICIAL DECISIONS

Issue must be raised within 30 days.

— Condemnees waived any challenge to the legality of a condemnor's declaration of taking and any right to urge that the taking is ineffective in order to commence proceedings which are otherwise subject to the five-year dismissal rule under O.C.G.A. § 9-11-41(e) by failing to raise any issue of a defective declaration of taking within the 30-day period mandated under O.C.G.A. § 32-3-11. *Parker v. Department of Transp.*, 184 Ga. App. 882, 363 S.E.2d 156 (1987), cert. denied, 184 Ga. App. 910, 363 S.E.2d 156 (1988).

Subsection (c) hearing requirement. — Subsection (c) of O.C.G.A. § 32-3-11 requires that a hearing be held, not that a ruling be made, within the 60-day time period. *DOT v. City of Atlanta*, 259 Ga. 305, 380 S.E.2d 265 (1989).

Georgia legislature did not intend to deprive the trial court of jurisdiction to consider the motion to set aside if the hearing was not held within 60 days because, once the condemnnee had fulfilled the obligation to file a timely motion to set aside, O.C.G.A. § 32-3-11(c) contemplates action by the court, not by the condemnnee. As such, the trial court did not err when the court refused to dismiss the motion to set aside. *Cobb County v. Robertson*, No. A11A2270, 2012 Ga. App. LEXIS 212 (Feb. 29, 2012).

Transfer set aside. — When, in a proceeding to condemn property for highway purposes, the evidence was that the Department of Transportation by this tak-

ing would create a grave and unusual risk to the safety of the public, the transfer of defendant's property to the department was set aside unless or until the department became bound to implement a plan of construction that would provide adequate protection against ice falling from defendant's broadcasting tower and guy wires under which the property condemned lies. *Cox Communications, Inc. v. DOT*, 256 Ga. 455, 349 S.E.2d 450 (1986).

Remedy for bad faith finding. — Although the trial court properly found that Georgia Department of Transportation acted in bad faith in issuing the department's declaration of taking regarding the condemnnees' land, the department erred in setting aside, on the condemnnees' motion, only the limited access portion of the declarations of taking as the proper remedy was to set aside the declarations of taking in their entirety. *DOT v. Bunn*, 268 Ga. App. 712, 603 S.E.2d 2 (2004).

Association failed to prove that the proposed road was unsafe; thus, the taking was not an improper use of the Department of Transportation's condemnation powers. *Habersham Downs Homeowners' Ass'n v. DOT*, 212 Ga. App. 686, 442 S.E.2d 868 (1994).

Superior court erred by not setting aside a declaration of taking on the basis of a county's bad faith exercise of the county's power of eminent domain, since the condemnnees' property was condemned to avoid inconveniencing a lumber com-

pany which was the owner of adjacent land. *Brannen v. Bulloch County*, 193 Ga. App. 151, 387 S.E.2d 395 (1989).

No abuse or misuse of powers found. — Under the facts of this case, assertions that the condemnation of a permanent construction easement was an abuse and misuse of the Department of Transportation's (DOT's) powers of condemnation were without merit. *Skipper v. DOT*, 197 Ga. App. 634, 399 S.E.2d 538 (1990).

Compensation limited. — Department of Transportation would not be required both to provide compensation for a diminution in the value of the amenities package and to construct a barrier so as to eliminate such diminution in value. *Habersham Downs Homeowners' Ass'n v. DOT*, 212 Ga. App. 686, 442 S.E.2d 868 (1994).

Recovery of attorney's fees and costs by condemnee. — Condemnee's claim for attorney's fees and litigation expenses based on the fraud and bad faith that condemnor allegedly exhibited during the condemnor's acquisition of the property in question could only be raised in a proceeding pursuant to O.C.G.A. § 32-3-11 and not in an action seeking to establish just and reasonable compensation only. *DOT v. Franco's Pizza & Delicatessen, Inc.*, 164 Ga. App. 497, 297 S.E.2d 72 (1982).

Action in which landowners sought to vacate a condemnation and requested attorney fees for litigation spawned from the misuse and improper use of the powers of the department of transportation was a "proper case" for the recovery of attorney fees. *DOT v. B & G Realty, Inc.*, 197 Ga. App. 613, 398 S.E.2d 762 (1990).

Requirement that a request for fees under O.C.G.A. § 13-6-11 be made in the complaint is consistent with subsection (c) of O.C.G.A. § 32-3-11. *DOT v. Georgia Television Co.*, 244 Ga. App. 750, 536 S.E.2d 773 (2000).

Error to apportion damages without evidence in support of claim. — Award for condemned land utilized for a road right-of-way was just and adequate compensation, but the trial court erred in

apportioning damages to one plaintiff without receiving evidence in support of the plaintiff's claim for damages. *Whitfield v. DOT*, 248 Ga. App. 172, 546 S.E.2d 308 (2001).

Pending valuation issue in trial court results in no appellate court jurisdiction. — Appellate court had to dismiss the company's appeal of the trial court's denial of the company's motion to set aside, vacate, and annul the county's declaration of taking in a condemnation action as the issue of the property's valuation was still pending before the trial court; accordingly, the appellate court did not have jurisdiction over the appeal because the record did not show that the company followed the procedures for bringing an interlocutory appeal and the trial court had not issued a final judgment from which the company could appeal. *TJW Enters. v. Henry County*, 261 Ga. App. 547, 583 S.E.2d 144 (2003).

Rule nisi. — Trial court erred in dismissing the Georgia Department of Transportation's (DOT's) condemnation petition for the department's failure to submit a properly attested affidavit with the department's petition as the condemnees were estopped from challenging the taking of their property because the condemnees withdrew the money deposited by DOT in the court registry. *Ga. DOT v. Bowles*, 292 Ga. App. 829, 666 S.E.2d 92 (2008).

Cited in *Coffee v. Atkinson County*, 236 Ga. 248, 223 S.E.2d 648 (1976); *Metropolitan Atlanta Rapid Transit Auth. v. Trussell*, 247 Ga. 148, 273 S.E.2d 859 (1981); *Texaco, Inc. v. DOT*, 165 Ga. App. 338, 301 S.E.2d 59 (1983); *Stephens v. Department of Transp.*, 170 Ga. App. 784, 318 S.E.2d 167 (1984); *Brooks v. DOT*, 254 Ga. 60, 327 S.E.2d 175 (1985); *Cox Communications, Inc. v. DOT*, 178 Ga. App. 499, 343 S.E.2d 765 (1986); *DOT v. Hudson*, 179 Ga. App. 842, 348 S.E.2d 106 (1986); *Chamlee v. DOT*, 189 Ga. App. 334, 375 S.E.2d 626 (1988); *DOT v. Rasmussen*, 244 Ga. App. 245, 534 S.E.2d 573 (2000); *Whitfield v. DOT*, 248 Ga. App. 172, 546 S.E.2d 308 (2001); *City of Atlanta v. Yusen Air & Sea Serv. Holdings Inc.*, 263 Ga. App. 82, 587 S.E.2d 230 (2003).

RESEARCH REFERENCES

ALR. — Constitutionality of statute or ordinance denying right of property owners to defeat a proposed street improvement by protest, 52 ALR 883.

32-3-12. Orders of court for payment of award in condemnation proceedings, for surrender of property, and as to other charges.

(a) Upon the application of the parties in interest, and not earlier than 15 days subsequent to the date of the last advertisement in the official newspaper of the county as provided for in subsection (f) of Code Section 32-3-8, the court shall order that the money deposited in the court, or any part thereof applied for, be paid forthwith to the parties found to be entitled thereto, for the just compensation to be awarded in the proceedings; provided, however, that, where the validity of the proceedings has been placed in issue as provided for in Code Section 32-3-11, the court shall not order the payment of the fund to the condemnee pending a final determination of such questions.

(b) Upon the filing of a declaration of taking, the court shall have power to fix the time, the same to be not later than 60 days from the date of the filing of the declaration of taking as provided in Code Section 32-3-6, within which and the terms upon which the parties in possession shall be required to surrender possession to the petitioner. The court shall have power to make such orders in respect of encumbrances, liens, rents, taxes, assessments, insurance, and other charges, if any, as shall be just and equitable. (Code 1933, § 95A-608, enacted by Ga. L. 1973, p. 947, § 1.)

JUDICIAL DECISIONS

Taking hearing distinguished from appeal from offered compensation. — Taking hearing, as provided in Ga. L. 1973, p. 947, § 1, is a right that is separate and apart from an appeal from the offered compensation, and does not in any way affect the right of appeal. *DOT v. Palmer*, 152 Ga. App. 630, 263 S.E.2d 514 (1979).

Ga. L. 1973, p. 947, § 1 applies only

to possession, while time for filing a notice of appeal is contained in Ga. L. 1973, p. 947, § 1 and is controlling in all cases where an appeal is desired. *DOT v. Harrison*, 154 Ga. App. 118, 267 S.E.2d 651, cert. denied, 449 U.S. 843, 101 S. Ct. 125, 66 L. Ed. 2d 51 (1980).

Cited in *DOT v. Olshan*, 237 Ga. 213, 227 S.E.2d 349 (1976).

32-3-13. Self-executing nature of declaration of taking; court costs; entry of judgment; transfer of case to closed docket; effect of Code section on condemnor's title.

(a) No judgment of any court and no order or ruling of the judge thereof shall be necessary to give effect to the declaration of taking

provided for in Code Section 32-3-6; but the same shall be self-executing, subject, however, to the power of the court as provided for in Code Section 32-3-11.

(b) If no appeal is filed as provided for in Code Section 32-3-14, the condemnor shall, at the next term of the superior court convening not earlier than 30 days subsequent to the date of service, as provided for in Code Sections 32-3-8 and 32-3-9, or at any time thereafter, pay all accrued court costs in the case to the clerk of the superior court in which the same is pending, at which time the judge of the superior court shall enter judgment in favor of the condemnee and against the condemnor for the sum of money deposited by the condemnor with the declaration of taking. If such sum has been withdrawn from the court by the condemnee as provided for in Code Section 32-3-12, the clerk of the superior court shall mark such judgment satisfied; and if the condemnee has not withdrawn such sum the clerk shall immediately apply the same to the payment of the judgment and either transmit the same to the condemnee or cause the condemnee to be notified that he, the clerk, holds the same subject to the demand of the condemnee.

(c) In any event, the case shall be transferred, under the conditions set out in this Code section, to the closed docket.

(d) Nothing provided for in this Code section shall be construed as in any way affecting the title acquired by the condemnor by virtue of the declaration of taking, as provided for in Code Section 32-3-7. (Code 1933, § 95A-609, enacted by Ga. L. 1973, p. 947, § 1.)

JUDICIAL DECISIONS

Provision for opening default inapplicable. — Ga. L. 1967, p. 226, § 24 does not apply to a condemnation proceeding. DOT v. Forrester, 149 Ga. App. 647, 255 S.E.2d 115 (1979).

Cited in Stephens v. Department of Transp., 170 Ga. App. 784, 318 S.E.2d 167 (1984); DOT v. Samuels, 185 Ga. App. 871, 366 S.E.2d 181 (1988).

32-3-14. Filing notice of appeal.

If the owner, or any of the owners, or any person having a claim against or interest in the property is dissatisfied with the amount of compensation as estimated in the declaration of taking and deposited in court, as provided for in Code Section 32-3-7, such person or persons, or any of them, shall have the right, at any time subsequent to the filing of the declaration and the deposit of the fund into court, but not later than 30 days following the date of the service as provided for in Code Sections 32-3-8 and 32-3-9, to file with the court a notice of appeal, the same to be in writing and made a part of the record in the proceedings. (Code 1933, § 95A-610, enacted by Ga. L. 1973, p. 947, § 1.)

Law reviews. — For annual survey on zoning and land use law, see 61 Mercer L. Rev. 427 (2009).

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

TIME LIMITATION ON APPEALS

PERSONAL SERVICE

JOINT OWNERS

ISSUES ON APPEAL

General Consideration

Taking hearing distinguished from appeal from offered compensation. — Taking hearing, as provided in Ga. L. 1973, p. 947, § 1, is a right that is separate and apart from an appeal from the offered compensation as provided in Ga. L. 1973, p. 947, § 1, and does not in any way affect the right of appeal under that section. *DOT v. Palmer*, 152 Ga. App. 630, 263 S.E.2d 514 (1979).

Automatic dismissal under § 9-11-41(e). — Automatic dismissal provision of O.C.G.A. § 9-11-41(e), whereby any action in which no written order is taken for five years is automatically dismissed, applies to condemnation proceedings. *Adams v. Cobb County*, 184 Ga. App. 879, 363 S.E.2d 260 (1987), *aff'd*, 258 Ga. 352, 370 S.E.2d 748 (1988).

Condemnee who appeals deemed "plaintiff". — For every practical purpose and for every substantive issue, a condemnee who appeals a determination of value to a jury under O.C.G.A. § 32-3-14 is a "plaintiff." *Adams v. Cobb County*, 258 Ga. 352, 370 S.E.2d 748 (1988).

Doctrine of equitable estoppel is unavailable to extend a property owner's time for filing a notice of appeal under O.C.G.A. § 32-3-14; thus, a property owner could not rely on the doctrine. Moreover, the owner did not show that counsel for the state made intentional misstatements or was grossly negligent, and it was not shown that the owner exercised reasonable diligence. *Cedartown North P'ship, LLC v. Ga. DOT*, 296 Ga. App. 54, 673 S.E.2d 562 (2009).

Partial taking condemnation order not final judgment. — Because a partial taking condemnation order was not otherwise a final appealable judgment within the meaning of O.C.G.A. § 5-6-34(a), and the parties could have appealed by complying with the relevant interlocutory appeal requirements, but did not do so, the appeals court lacked jurisdiction to consider either the appeal or the cross-appeal; moreover, the superior court's rulings on the admissibility of certain evidence constituted no judgment on the merits of any part of the appealing party's claim for just and adequate compensation. *Forest City Gun Club v. Chatham County*, 280 Ga. App. 219, 633 S.E.2d 623 (2006).

Cited in *DOT v. Great S. Enters., Inc.*, 137 Ga. App. 710, 225 S.E.2d 80 (1976); *DOT v. Olshan*, 237 Ga. 213, 227 S.E.2d 349 (1976); *DOT v. Massengale*, 141 Ga. App. 70, 232 S.E.2d 608 (1977); *Morgan v. Department of Transp.*, 239 Ga. 560, 238 S.E.2d 95 (1977); *Department of Transp. v. Rudeseal*, 148 Ga. App. 179, 251 S.E.2d 11 (1978); *Blonder v. Department of Transp.*, 156 Ga. App. 711, 275 S.E.2d 762 (1980); *Morrison v. DOT*, 166 Ga. App. 144, 303 S.E.2d 501 (1983); *Department of Transp. v. Wright*, 169 Ga. App. 332, 312 S.E.2d 824 (1983); *Stephens v. Department of Transp.*, 170 Ga. App. 784, 318 S.E.2d 167 (1984); *Chambers v. DOT*, 172 Ga. App. 197, 322 S.E.2d 366 (1984); *Robinson v. DOT*, 185 Ga. App. 597, 364 S.E.2d 884 (1988); *Department of Transp. v. Morris*, 186 Ga. App. 673, 368 S.E.2d 155 (1988); *Lovell v. Department of Transp.*, 187 Ga. App. 259, 370 S.E.2d 27 (1988); *Whitfield v. DOT*, 248 Ga. App. 172, 546 S.E.2d 308 (2001).

Time Limitation on Appeals

Civil practice provisions inapplicable. — Provisions of the Civil Practice Act (O.C.G.A. Ch. 11, T. 9) which deal with time frames do not apply to periods of time which are definitely fixed by other statutes such as O.C.G.A. § 32-3-14. *Bates & Assocs. v. Department of Transp.*, 186 Ga. App. 828, 368 S.E.2d 544, cert. denied, 186 Ga. App. 917, 368 S.E.2d 544 (1988).

Period for appeal fixed by section. — Granting extensions of time as permitted under certain circumstances by the Civil Practice Act (O.C.G.A. Ch. 11, T. 9) does not apply to periods of time which are definitely fixed by other statutes. *McClure v. Department of Transp.*, 140 Ga. App. 564, 231 S.E.2d 532 (1976).

Ga. L. 1973, p. 947, § 1 applies only to possession, while time for filing a notice of appeal is contained in Ga. L. 1973, p. 947, § 1 and is controlling in all cases where an appeal is desired. *Department of Transp. v. Harrison*, 154 Ga. App. 118, 267 S.E.2d 651, cert. denied, 449 U.S. 843, 101 S. Ct. 125, 66 L. Ed. 2d 51 (1980) (see O.C.G.A. § 32-3-14).

Effect of failure to timely file. — When the lessee of a portion of property being condemned did not file a timely notice of appeal, the lessee was not entitled to a jury trial on the valuation of the lessee's interest in the property and could not raise the issue of business losses. *Lil Champ Food Stores, Inc. v. DOT*, 230 Ga. App. 715, 498 S.E.2d 94 (1998).

Thirty-day period under this section cannot be extended. *Department of Transp. v. Palmer*, 152 Ga. App. 630, 263 S.E.2d 514 (1979) (see O.C.G.A. § 32-3-14).

Time for appeal. — Trial court has no authority or discretion to extend the period of time for filing a notice of appeal. *McClure v. Department of Transp.*, 140 Ga. App. 564, 231 S.E.2d 532 (1976).

Right to appeal to a jury from a declaration of taking is absolutely conditional upon the filing of a timely notice of appeal in the superior court, and not even the trial court is empowered to extend the period of time for filing the notice of appeal. *Department of Transp. v. Rudeseal*,

156 Ga. App. 712, 276 S.E.2d 52 (1980).

Statute tolling filing time in cases of fraud not applicable. — O.C.G.A. § 32-3-14 sets forth a mandatory time period for filing an appeal in a condemnation action, not a statute of limitation for commencing a particular type of action; thus, O.C.G.A. § 9-3-96 did not apply to extend a property owner's time for filing an appeal. Moreover, the owner did not show that the Department of Transportation committed actual fraud involving moral turpitude or that the owner itself exercised reasonable diligence. *Cedartown North P'ship, LLC v. Ga. DOT*, 296 Ga. App. 54, 673 S.E.2d 562 (2009).

What constituted "service" for purposes of calculating 30 days. — "Personal service" required under Ga. L. 1973, p. 947, § 1 includes all the variations provided in the Civil Practice Act and does not mandate that the condemner be handed the petition individually. *Department of Transp. v. Ridley*, 244 Ga. 49, 257 S.E.2d 511 (1979).

Filing by cocondemnee. — Condemnee's notice of appeal is untimely despite the fact that the cocondemnee filed a timely answer because the cocondemnee's answer was not a notice of appeal where the answer did not express dissatisfaction with the proposed compensation but merely sought to clarify its name. *Howard v. Department of Transp.*, 184 Ga. App. 116, 361 S.E.2d 7 (1987).

Condemnee's statutory period for filing a notice of appeal is not extended by late service on a cocondemnee. *Howard v. Department of Transp.*, 184 Ga. App. 116, 361 S.E.2d 7 (1987).

Code Section 32-3-17, allowing intervention, inapplicable to named condemnee. — O.C.G.A. § 32-3-17 makes provision for parties whose claims were unknown at the time the petition was filed and who were not named therein, or for taxpayers seeking to intervene in a condemnation proceeding, and is inapplicable to the situation of a condemnee named in the petition who files an appeal more than 30 days after being served with the petition. *Bates & Assocs. v. Department of Transp.*, 186 Ga. App. 828, 368 S.E.2d 544, cert. denied, 186 Ga. App. 917, 368 S.E.2d 544 (1988).

Time Limitation on Appeals (Cont'd)

Appeals less than 30 days after advertising can still be untimely. — When the appeal was filed more than 30 days from the date of personal service, although less than 30 days from the completion of advertising as provided for in subsection (f) of Ga. L. 1973, p. 947, § 1, the appeal was not timely. *Department of Transp. v. Brooks*, 143 Ga. App. 872, 240 S.E.2d 163 (1977).

Personal Service

Applicability of thirty-day provision. — Thirty-day provision in this section refers only to period following personal service on condemnee as shown by the return of service. *Department of Transp. v. Brooks*, 143 Ga. App. 872, 240 S.E.2d 163 (1977) (see O.C.G.A. § 32-3-14).

Joint Owners

Appeal allowed where some joint owners not properly served. — Since the record failed to show service on some of the parties named as joint owners in each of several cases, a notice of appeal to a jury on the questions of value and consequential damages was not too late, although filed more than 30 days after the filing of the declaration of taking, since the condemnees were not properly served and did not waive service until the actual filing of the appeal. *Knight v. Department of Transp.*, 134 Ga. App. 332, 214 S.E.2d 418 (1975).

Issue of personal service to be disposed of as whole. — When a joint notice of appeal is filed by all condemnees, the court should not dismiss the appeal as

to some of the appellants who were served in the first instance while allowing it as to others, but the issue should be taken and disposed of as a whole. *Knight v. Department of Transp.*, 134 Ga. App. 332, 214 S.E.2d 418 (1975).

Issues on Appeal

Affidavit as to just compensation not an admission of fact. — Department of Transportation's affidavit filed pursuant to O.C.G.A. § 32-3-6(b)(5) did not constitute an admission of fact which would be admissible against the Department of Transportation in condemnee's appeal pursuant to O.C.G.A. § 32-3-14. *Aiken v. Department of Transp.*, 171 Ga. App. 154, 319 S.E.2d 58 (1984).

Original estimate not binding in jury appeal. — When a condemnee is dissatisfied with the compensation originally estimated and elects to appeal that issue to a jury, the condemnor is not bound by the condemnor's original estimate and can present evidence de novo as to fair market value and consequential damages. *Aiken v. Department of Transp.*, 171 Ga. App. 154, 319 S.E.2d 58 (1984).

Business loss damages need not be specifically pled in notice of appeal. — Because there was no legislative requirement that, in a condemnation proceeding, a party seeking business loss damages had to specifically and separately plead for such in the notice of appeal, in accordance with the consent judgment that the Georgia Department of Transportation was bound by, a lessee's appeal was to proceed to trial on the lessee's claims for business loss, damages to trade fixtures, and relocation expenses. *DOT v. Camvic Corp.*, 284 Ga. App. 321, 644 S.E.2d 171 (2007).

32-3-15. Interlocutory hearing on amount of compensation.

(a) An appeal having been filed as provided in Code Section 32-3-14, the appellant or appellants, at any time before the beginning of the trial of the issue formed on such appeal, but not later than 90 days after the date of service as provided in Code Sections 32-3-8 and 32-3-9, may file in the case a petition for an interlocutory hearing on the issue of whether the amount deposited in court as just and adequate compensation is sufficient. Such petition shall be served as may be directed by the court. The petition shall be verified and shall state the amount

which is claimed by the petitioner to represent just and adequate compensation, together with a sworn, written statement of the facts upon which the claim is based.

(b) Upon the presentation of the interlocutory petition to the judge of the court in which the case is pending, the court shall make such order as to the appointment of assessors as shall conform most nearly to Article 1 of Chapter 2 of Title 22 and shall give all interested persons equal rights in the selection thereof. If by reason of conflicting interests or otherwise such equality of right cannot be preserved, the judge shall make such order on the subject as shall secure a fair and impartial assessment. The board of assessors so appointed shall determine from all evidence offered by the parties, from personal inspection of the premises, and from its own professional judgment whether the condemnor should be required to deposit any additional amount as estimated compensation and shall, within 30 days of the date of reference to such board, make an interlocutory award based upon such determination.

(c) Upon approval of the interlocutory award by the court and service of a copy upon the condemnor, as may be directed by the court, the condemnor shall within 15 days pay into court any additional amount required to be paid pursuant to the interlocutory award.

(d) Upon the application of the party or parties in interest at any time before a jury verdict on the appeal, the court shall order that the additional money deposited in court be paid forthwith to the parties found to be entitled thereto; provided, however, that any party or parties receiving any payment of any amount paid into court pursuant to an interlocutory award shall, before receiving such payment, file in the case a bond in the amount of such payment conditioned for the repayment of any amount so received by such party which may be in excess of the amount awarded by the jury upon the trial of the appeal. Such bond shall be executed by a surety company authorized to do business in this state; and, in the event the amount awarded by the jury on final trial of the appeal is less than the total amount paid into court by the condemnor, judgment may be entered against the principal and surety on the bond for the amount by which the total amount paid into court exceeds the amount awarded by the jury; and, if the amount awarded by the jury is less than the original deposit, judgment may be entered against the condemnee for that part of the judgment not covered by the bond.

(e) The assessors shall be compensated as provided in Code Section 22-2-84.

(f) The interlocutory award provided for in this Code section shall not be subject to exceptions to any higher court.

(g) If the condemnee notifies the court in writing to dismiss the appeal filed by the condemnee pursuant to Code Section 32-3-14 within

15 days following the date the interlocutory award is approved by the court, that interlocutory award shall become the final judgment in the proceeding and shall not be vacated or modified, and that appeal shall be dismissed unless the condemnor files with the court a notice objecting to such dismissal within 15 days following the date the condemnnee notified the condemnor of the notice to dismiss such appeal. (Code 1933, § 95A-611, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1991, p. 332, § 1; Ga. L. 1998, p. 1539, § 12.)

Editor's notes. — Ga. L. 1991, p. 332, § 2, not codified by the General Assembly, provides that the amendment shall be applicable to those proceedings in which the declaration of taking is filed with the court on or after July 1, 1991.

Law reviews. — For review of 1998 legislation relating to eminent domain, see 15 Ga. St. U.L. Rev. 115 (1998).

JUDICIAL DECISIONS

For discussion of the constitutionality of section, see *Morgan v. Department of Transp.*, 239 Ga. 560, 238 S.E.2d 95 (1977) (see O.C.G.A. § 32-3-15).

Legislative intent to make interlocutory award available. — That the interlocutory award is not subject to being vacated or modified after 15 days indicates a legislative intent to make the interlocutory award quickly available to the condemnnee without further protracted dispute over the interlocutory amount. *Morgan v. Department of Transp.*, 239 Ga. 560, 238 S.E.2d 95 (1977).

No intent to make interlocutory award of estimated compensation unappealable. — Interpretation of this section which would allow interlocutory awards of estimated compensation to become nonappealable final judgments is contrary to the legislative scheme. *Morgan v. Department of Transp.*, 239 Ga. 560, 238 S.E.2d 95 (1977) (see O.C.G.A. § 32-3-15).

Court appointment of special mas-

ter to hear all issues improper. — Trial court's sua sponte appointment of a special master and the court's submission of all issues to that master was contrary to O.C.G.A. § 32-3-15, which contemplates that only the condemnnee can petition for an appointment of a special master and that such a master can consider only the issue of compensation. *Stephens v. Department of Transp.*, 170 Ga. App. 784, 318 S.E.2d 167 (1984).

Condemnee required to post bond. — Same requirements pertaining to a condemnnee's obligation to post bond apply to a condemnnee who seeks a greater award, whether the condemnnee pursues an interlocutory hearing before a special master, or appeals directly to a jury, the sum initially awarded by the court. *Kellett v. Department of Transp.*, 174 Ga. App. 214, 329 S.E.2d 514 (1985).

Cited in *Department of Transp. v. 0.144 Acres of Land*, 167 Ga. App. 59, 306 S.E.2d 59 (1983).

OPINIONS OF THE ATTORNEY GENERAL

Surplus property not to be placed in court registry. — Legislature intended that only money, and not surplus property, be placed into the court registry

for satisfaction of any judgment resulting from a condemnation action. 1992 Op. Att'y Gen. No. 92-8.

RESEARCH REFERENCES

ALR. — Referee's failure to file report within time specified by statute, court order, or stipulation as terminating reference, 71 ALR4th 889.

32-3-16. Appeal to jury; evidence to be heard on appeal; subsequent review of issues not brought before jury.

(a) After the notice of appeal has been filed as provided in Code Section 32-3-14, it shall be the duty of the court at the next term thereof, which shall convene not earlier than 30 days subsequent to the date of service, as provided for in Code Sections 32-3-8 and 32-3-9, to cause an issue to be made and tried by a jury as to the value of the property or interest taken and the consequential damages to property or interests not taken, with the same right to move for a new trial and file a notice of appeal as in other cases at law, provided that an interlocutory award has not become final pursuant to Code Section 32-3-15.

(b) When an appeal has been filed pursuant to Code Section 32-3-14, all subsequent proceedings thereon shall have the nature of a de novo investigation with the right of either party, under the rules of evidence as provided for in the general laws of this state, to introduce evidence concerning:

(1) The fair market value of the property or interest taken or other evidence of just and adequate compensation;

(2) The prospective and consequential damages to the remaining property or interests by reason of the taking and use of the property or interest for the purposes for which taken; and

(3) The consequential benefits accruing to such remaining property or interests by reason of such taking and use,

provided that such consequential benefits, if any, may be offset against such consequential damages, if any; but, in no event, shall consequential benefits be offset against the value of the property or interest actually taken.

(c) If, for any reason, the issues made by the filing of the notice of appeal provided for in this Code section are not tried by a jury as to the value of the property or interest taken and the consequential damages to the property or interests not taken, at the next term of the court after the filing of such appeal, such fact shall not be cause for dismissal of the appeal and the issues made by such appeal shall be subject to trial at any future term of the court. (Code 1933, § 95A-612, enacted by Ga. L. 1973, p. 947, § 1.)

Cross references. — Further provisions regarding evidence to be considered

in determining just and adequate compensation, §§ 22-2-109, 22-2-137.

JUDICIAL DECISIONS

Interlocutory awards of estimated compensation appealable. — Any interpretation of this section allowing interlocutory awards of estimated compensation to become nonappealable final judgments is contrary to the legislative scheme. *Morgan v. Department of Transp.*, 239 Ga. 560, 238 S.E.2d 95 (1977) (see O.C.G.A. § 32-3-16).

Failure to make issue at trial of alleged error. — If alleged error was never made an issue at trial, no question is presented for review on appeal. *DeKalb County v. Cowan*, 151 Ga. App. 753, 261 S.E.2d 478 (1979).

Issue of whether or not property is unique is a jury question. *DOT v. 19,646 Acres of Land*, 178 Ga. App. 287, 342 S.E.2d 760 (1986).

Condemnor not bound by original estimate upon condemnee's appeal to jury. — When a condemnee is dissatisfied with the compensation originally estimated by the condemnor and elects to appeal that issue to a jury, the condemnor is not bound by the condemnor's original estimate but can present evidence de novo as to the fair market value and consequential damages. *Morrison v. DOT*, 166 Ga. App. 144, 303 S.E.2d 501 (1983).

Evidence of sales of comparable property in condemnation proceedings which is not too remote in point of time could become relevant as the basis of an expert's explanation as to how the expert arrived at the valuation and, when such use is made of evidence of comparable sales, no foundation need be laid concerning the similarity of the property. *Panos v. Department of Transp.*, 162 Ga. App. 53, 290 S.E.2d 295 (1982).

Improper exclusion of expert opinion. — Expert's opinion as to what the expert would pay for condemned land was probative of the land's fair market value and improperly excluded by the trial court. *Jotin Realty Co. v. Department of Transp.*, 174 Ga. App. 809, 331 S.E.2d 605 (1985).

Expert appraiser previously employed by another condemning au-

thority. — In a condemnation action where the issue was just and adequate compensation, and the condemnees' expert appraiser testified to having previously been employed by another condemning authority to appraise the same property, but the Department of Transportation did not object to the witness at trial, the issue may not be raised on appeal. *DOT v. Bennett*, 194 Ga. App. 789, 391 S.E.2d 724 (1990).

Greater difficulty in ingress and egress which is occasioned by changing traffic patterns is not an appropriate item of damages in eminent domain proceedings. *Department of Transp. v. Coley*, 184 Ga. App. 206, 360 S.E.2d 924 (1987).

Consequential damages provable. — In condemnation proceedings, the condemnee is entitled to prove every element of consequential damage that is relevant. *Department of Transp. v. Coley*, 184 Ga. App. 206, 360 S.E.2d 924 (1987).

Because a condemnee did not claim lost profits or business losses, the trial court properly limited the condemnee's evidence to the value of the property taken and consequential damages to the remainder; because the jury's valuation was within the range of the evidence, the trial court properly denied the condemnee's motion for a new trial. *Thornton v. DOT*, 275 Ga. App. 401, 620 S.E.2d 621 (2005).

Business loss damages need not be specifically pled in notice of appeal.

— Because there was no legislative requirement that, in a condemnation proceeding, a party seeking business loss damages had to specifically and separately plead for such in the notice of appeal, in accordance with the consent judgment that the Georgia Department of Transportation was bound by, a lessee's appeal was to proceed to trial on the lessee's claims for business loss, damages to trade fixtures, and relocation expenses. *DOT v. Camvic Corp.*, 284 Ga. App. 321, 644 S.E.2d 171 (2007).

Use of "condemnee" rather than "condemnor" in burden of proof in-

struction. — When, in a condemnation action, the use of “condemnees” rather than “condemnor” in the charge explaining the burden of proof is clearly inadvertent, a slip of the tongue, the error is not likely to confuse or mislead the jury and, thus, is not so substantial as to require reversal. *Morrison v. DOT*, 166 Ga. App. 144, 303 S.E.2d 501 (1983).

Jury charges constituting reversible error. — Jury charge that limited jury’s use of the replacement-cost-less-depreciation method for establishing fair market value to situations where the market or income approaches were not suitable was incorrect and constituted reversible error. *Jotin Realty Co. v. Department of Transp.*, 174 Ga. App. 809, 331 S.E.2d 605 (1985).

Attorney’s fees and costs recoverable only in § 32-3-11 action. — Condemnee’s claim for attorney’s fees and litigation expenses based on the fraud and bad faith that the condemnor allegedly exhibited during the condemnor’s acquisition of the property in question could only be raised in a proceeding pursuant to O.C.G.A. § 32-3-11 and not in an action seeking to establish just and reasonable compensation only. *Department of Transp. v. Franco’s Pizza & Delicatessen, Inc.*, 164 Ga. App. 497, 297 S.E.2d 72 (1982).

Cited in *Stephens v. Department of Transp.*, 170 Ga. App. 784, 318 S.E.2d 167 (1984).

RESEARCH REFERENCES

ALR. — Eminent domain: unity or contiguity of separate properties sufficient to allow damages for diminished value of

parcel remaining after taking of other parcel, 59 ALR4th 308.

32-3-17. Right to intervene in proceedings; effect of subsequent proceedings on rights of condemnor.

(a) No provision of this article in reference to any rule or order, or time for responding thereto, shall be held or construed to exclude any person by way of default from making known his rights or claims in the property or interests or in the fund arising therefrom. Any such person claiming an interest or any rights therein may file appropriate pleadings or intervention at any time before verdict and be fully heard thereon. If any person, at any time during the pendency of such proceeding, desires to come in and be heard on any claim to the fund or interest therein, he shall be allowed to do so.

(b) After the filing of the declaration of taking and the payment of the fund into the registry of the court as provided for in Code Section 32-3-7, the petitioner shall not be concerned with or affected by any subsequent proceedings except as to the appeal and interlocutory petition provided for in Code Sections 32-3-14 and 32-3-15 respectively and concerning which the sole issue shall be as to the amount of just and adequate compensation. (Code 1933, § 95A-613, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1982, p. 3, § 32.)

JUDICIAL DECISIONS

All claimants to one piece of condemned property are to be joined in one action for resolution of all issues by trial. *DOT v. McLaughlin*, 163 Ga. App. 1, 292 S.E.2d 435 (1982), overruled on other grounds, 264 Ga. 393, 444 S.E.2d 734 (1994).

Public possesses "an interest" in public property and, therefore, taxpayers possess the right to intervene in condemnation actions against land owned by the entity to which the taxpayers pay their taxes. *DOT v. City of Atlanta*, 255 Ga. 124, 337 S.E.2d 327 (1985).

Code section inapplicable to named condemnee. — O.C.G.A. § 32-3-17 is inapplicable to the situation of a condemnee named in the petition who files an appeal more than 30 days after being served with

the petition. *Bates & Assocs. v. Department of Transp.*, 186 Ga. App. 828, 368 S.E.2d 544, cert. denied, 186 Ga. App. 917, 368 S.E.2d 544 (1988).

Validity of taking not affected by dispute over funds. — Dispute between two condemnees over the ownership of the funds paid into the registry of the court and the manner in which the funds were paid out did not affect the validity of the taking itself. *Brown v. Department of Transp.*, 191 Ga. App. 321, 381 S.E.2d 532, cert. denied, 191 Ga. App. 921, 381 S.E.2d 532 (1989).

Cited in *Department of Transp. v. Olshan*, 237 Ga. 213, 227 S.E.2d 349 (1976); *Robinson v. DOT*, 185 Ga. App. 597, 364 S.E.2d 884 (1988).

32-3-17.1. Decisions upon questions of law; power of judge to give necessary orders and directions; jury trial in open court only.

All questions of law arising upon the pleadings or in any other way arising from the cause, subsequent to the filing of the declaration of taking and the deposit of the fund, and subsequent to the filing of notice of appeal, if any, shall be passed on by the presiding judge who may, from time to time, make such orders and give such directions as are necessary to speed the cause, and as may be consistent with justice and due process of law; but no jury trial shall be had except in open court. (Code 1981, § 32-3-17.1, enacted by Ga. L. 1982, p. 3, § 32; Ga. L. 1985, p. 149, § 32.)

JUDICIAL DECISIONS

Consolidation of condemnation cases when entire property has common use. — Whether it is appropriate to consolidate two condemnation proceedings depends upon the use of the property, and when the entire property had a common use so as to entitle the landowners to the consequential damages calculated as resulting to the whole of the property rather than to separate parcels, the trial court's order consolidating the two cases was not in error — especially where to allow two different actions to be brought regarding the one property could have resulted in great harm and injustice to the

condemnees' substantive rights. *Department of Transp. v. Defoor*, 173 Ga. App. 218, 325 S.E.2d 863 (1984).

Restriction on court's power to appoint special master. — O.C.G.A. § 32-3-17.1 does not give the superior court the authority to make a sua sponte appointment of a special master to resolve all issues in the proceedings as if the issues had been brought under O.C.G.A. § 22-2-100 et seq. *Stephens v. Department of Transp.*, 170 Ga. App. 784, 318 S.E.2d 167 (1984).

Evidentiary hearing required for mixed questions of law and fact. — In

a proceeding by a lessor for compensation for an easement on condemned property, the issue of the lessor's interest involved mixed questions of law and fact and could only be dealt with by the court on evidentiary hearing, trial on non-value issues, or summary judgment and not under O.C.G.A. § 32-3-17.1. *S & S Food Servs., Inc. v. DOT*, 222 Ga. App. 579, 475 S.E.2d 197 (1996).

Amendment of defective declaration of taking. — When the Department of Transportation filed a declaration of taking pursuant to O.C.G.A. § 32-3-1 et seq., which included the taking of a temporary work easement to be used in the demolition of a building on the condemned property, the department did not adequately describe the easement as the department's plat attached to the department's declaration did not describe the easement, and there was no description of the easement's width nor any limitation regarding a pathway which had to be used when traversing land not condemned; the issue was not rendered moot by the fact that the condemnees did not obtain a stay pending appeal and the work was completed during the appeal's pendency because O.C.G.A. § 32-3-17.1 authorized a

trial court to order a condemnor to amend a defective declaration of taking. *Ga. 400 Indus. Park, Inc. v. DOT*, 274 Ga. App. 153, 616 S.E.2d 903 (2005).

Business loss damages need not be specifically pled in notice of appeal.

— Because there was no legislative requirement that, in a condemnation proceeding, a party seeking business loss damages had to specifically and separately plead for such in the notice of appeal, in accordance with the consent judgment that the Georgia Department of Transportation was bound by, a lessee's appeal was to proceed to trial on the lessee's claims for business loss, damages to trade fixtures, and relocation expenses. *DOT v. Camvic Corp.*, 284 Ga. App. 321, 644 S.E.2d 171 (2007).

Condemnee has no vested right in attorney fees granted by court. —

Trial court does not have authority, under O.C.G.A. § 32-3-17.1, to require payment of reasonable and necessary attorney fees and expenses of litigation for proceedings before an appellate court of this state. *DOT v. Franco's Pizza & Delicatessen, Inc.*, 200 Ga. App. 723, 409 S.E.2d 281, cert. denied, 200 Ga. App. 895, 409 S.E.2d 281 (1991), overruled on other grounds, 264 Ga. 393, 444 S.E.2d 734 (1994).

32-3-18. Prevention or delay of vesting of title in condemnor.

No appeal in any cause under this article and no bond or undertaking given shall operate to prevent or delay the vesting of title to such lands in the condemnor, subject, however, to the power of the court as provided in Code Section 32-3-20. (Code 1933, § 95A-615, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1982, p. 3, § 32.)

32-3-19. Jury verdict; entry of judgment; interest on award; commissions and poundage; transfer of case to closed docket; effect of Code section on condemnor's title.

(a) The verdict of the jury shall have respect to the lands described in the declaration of taking as set forth in Code Section 32-3-6, or such interest therein as may be described in said declaration, or to any separate claim against the property or interest therein as may be ordered and may be molded under the direction of the court so as to do complete justice and avoid confusion of interest. The court shall give such direction as to the disposition of the fund as shall be proper according to the rights of the several respondents.

(b) After the verdict of the jury, the court shall, in instances where no motion for new trial or notice of appeal is filed within the time provided for by law or where such verdict has been affirmed by a proper appellate court and the remittitur from such court has been made the judgment of the superior court, enter judgment in favor of the condemnee and against the condemnor in the amount of such verdict, together with the accrued court costs, which judgment shall be immediately credited with the sum of money deposited by the condemnor with the declaration of taking and which shall bear interest as provided in subsection (c) of this Code section; and, upon the failure or refusal of the condemnor immediately to deposit such increase in such sum into the registry of the court, as well as the accrued court costs, it shall be the duty of said clerk to issue execution therefor.

(c) After just and adequate compensation has been ascertained and established by judgment, the judgment shall include, as part of the just and adequate compensation awarded, interest from the date of taking to the date of payment pursuant to final judgment at the rate of 7 percent per annum on the amount awarded by final judgment as the value of the property as of the date of taking; but interest shall not be allowed on so much thereof as shall have been paid into the court and was subject to withdrawal by the condemnee without the requirement of posting a bond as required by Code Section 32-3-15. However, if the condemnee posted the bond and withdrew the additional deposit made after the special master's award and is later awarded a sum greater than the original deposit but less than the special master's award, the condemnee shall not be entitled to interest on this additional deposit for the time he had use of the money; but he shall be entitled to receive the percentage of the reasonable cost of the bond that the sum awarded over the original deposit bears to the sum of the special master's award over the original deposit. If the condemnee is later awarded a sum that exceeds the special master's award and he has posted bond and withdrawn the additional deposit, he shall not be entitled to interest on this additional deposit for the time he had use of the money but he shall be entitled to the reasonable cost of the bond.

(d) No sum so paid into the court shall be charged with commissions or poundage.

(e) In any event, the case shall be transferred, under the conditions set out in this Code section, to the closed docket. Nothing in this Code section shall be construed as in any way affecting the title acquired by the condemnor by virtue of the declaration of taking as provided for in Code Section 32-3-7. (Code 1933, § 95A-616, enacted by Ga. L. 1973, p. 947, § 1.)

Cross references. — Interest on judgments generally, § 7-4-12.

JUDICIAL DECISIONS

Entry of judgment. — Language of subsection (b) of O.C.G.A. § 32-3-19, which explicitly directs the entry of judgment in three enumerated instances, is meaningless or mere surplusage, and that language does not implicitly prohibit the entry of judgment in unenumerated instances. *DOT v. Petkas*, 189 Ga. App. 633, 377 S.E.2d 166, cert. denied, 189 Ga. App. 911, 377 S.E.2d 166 (1988).

Legislative determination of pre-judgment interest rate constitutional. — Prejudgment interest rate specified by subsection (c) of O.C.G.A. § 32-3-19 compensates the condemnee for the use of funds generated in a condemnation action, not for the use of the property condemned; thus, this interest rate is not part of “just compensation,” and legislative determination of the rate does not involve improper exercise of a judicial function. *Brooks v. DOT*, 254 Ga. 60, 327 S.E.2d 175 (1985).

Different percentages for prejudgment and postjudgment interest. — If no suspect class of condemnees is involved, application of different statutory percentages to prejudgment and postjudgment interest in condemnation cases is not unconstitutional. *Brooks v. DOT*, 254 Ga. 60, 327 S.E.2d 175 (1985).

Interest on award. — O.C.G.A. §§ 7-4-12 and 32-3-19 are to be construed together so that interest to the condemnee payable under these eminent domain proceedings is 7 percent between the date of taking and the final judgment and 12 percent thereafter until paid. *Department of Transp. v. Cochran*, 160 Ga. App. 583, 287 S.E.2d 599 (1981); *DOT v. Delta Mach. Prods. Co.*, 162 Ga. App. 252, 291 S.E.2d 104 (1982).

Property owner was entitled to interest under the statute since the lump sum estimate of just and adequate compensation, when paid into the court by the defendant city, was not immediately subject to withdrawal by the property owner as the sum had not been apportioned among the property owner and the owner's tenants. *Chouinard v. City of E. Point*, 237 Ga. App. 266, 514 S.E.2d 220 (1999).

In a condemnation action, the trial

court erred in denying a lessor's motion in limine to exclude evidence of the lessor's entitlement to statutory pre-judgment interest under O.C.G.A. § 32-3-19 because the fact that the trial court could later instruct the jury to disregard irrelevant evidence was not a reason to allow the jury to hear the irrelevant evidence; under the statutory framework of § 32-3-19, the amount of pre-judgment interest due a condemnee is determined after the jury enters a verdict. *CNLAPF Partners, LP v. DOT*, 307 Ga. App. 511, 705 S.E.2d 862 (2010).

Term “just and adequate compensation” in subsection (c) of O.C.G.A. § 32-3-19 does not include prejudgment interest as an integral part which would make prejudgment interest subject to postjudgment interest. *Department of Transp. v. Consolidated Equities Corp.*, 181 Ga. App. 672, 353 S.E.2d 603 (1987).

Post-judgment interest in condemnation actions is to be awarded in accordance with O.C.G.A. § 7-4-12 at 12 percent per annum rather than at 7 percent under O.C.G.A. § 32-3-19, as the former is the more recent of the statutes. *Department of Transp. v. Vest*, 160 Ga. App. 368, 287 S.E.2d 85 (1981).

Jury verdict establishes value. — Last word on value is the jury's verdict; the jury establishes the value. If the jury finds as a fact that the condemnor underestimated the value of the land, the condemnor must pay more; if it finds as a fact that the condemnor overestimated the value, the condemnee is not entitled to the proceeds of the government agency's mistake. *Kellett v. Department of Transp.*, 174 Ga. App. 214, 329 S.E.2d 514 (1985).

Appeals. — Mere filing of a timely motion for new trial or a notice of appeal, both of which contemplate the prior entry of a judgment on the jury's verdict, do not destroy the underlying viability of that prior judgment as a final appealable order in the case. *DOT v. Petkas*, 189 Ga. App. 633, 377 S.E.2d 166, cert. denied, 189 Ga. App. 911, 377 S.E.2d 166 (1988).

Cited in *Department of Transp. v. Doss*, 238 Ga. 480, 233 S.E.2d 144 (1977).

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Just and adequate compensation interest vests on date of taking.

— Right to receive interest as part of just and adequate compensation vests on date of taking, which is the day the declaration of taking, accompanied by the payment of just and adequate compensation, is filed in a superior court. 1980 Op. Att'y Gen. No. 80-100.

Interest on amount recovered in condemnation cases.

— Condemnation cases filed before the effective date of O.C.G.A. § 7-4-12 bear interest at 7 percent on the amount recovered from the

date of taking. Cases filed on and after the effective date of O.C.G.A. § 7-4-12 bear interest at 7 percent from the date of taking to the date of final judgment and at 12 percent from the date of final judgment. 1980 Op. Att'y Gen. No. 80-100.

Surplus property not to be placed in court registry.

— Legislature intended that only money, and not surplus property, be placed into the court registry for satisfaction of any judgment resulting from a condemnation action. 1992 Op. Att'y Gen. No. 92-8.

32-3-20. Effect of article on other methods of condemnation.

In cases involving condemnation of private property for public road purposes or any other public transportation purpose, this article shall be supplementary to and cumulative of the methods of procedure for condemnation of private property prescribed in Chapter 2 of Title 22. (Code 1933, § 95A-617, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1979, p. 973, § 6.)

ARTICLE 2

ACQUISITION OF RIGHTS OF WAY AND EASEMENTS FOR
FEDERAL PARKWAYS

Cross references. — Limited access roads generally, § 32-6-110 et seq.

32-3-30. Power of department to acquire rights of way and easements.

The department shall have the authority and is empowered to acquire, either by condemnation, purchase, gift, or other methods, rights of way and easements necessary to comply with the laws, rules, and regulations of the United States government for the construction of federal parkways in Georgia. (Ga. L. 1967, p. 604, § 1; Ga. L. 1969, p. 982, § 1.)

Cross references. — Easements generally, T. 44, C. 9.

RESEARCH REFERENCES

Am. Jur. 2d. — 26 Am. Jur. 2d, Eminent Domain, §§ 99, 257, 258, 307. 27 Am. Jur. 2d, Eminent Domain, § 837 et seq. 39 Am. Jur. 2d, Highways, Streets, and Bridges, §§ 191, 192.

C.J.S. — 29A C.J.S., Eminent Domain, §§ 144, 171.

32-3-31. Method of acquisition.

The authority delegated by this article to the department to acquire rights of way and easements for federal parkways shall be the same authority as hereinbefore provided by law for the acquisition of rights of way for present or future public road or other transportation purposes in Georgia; and the department shall exercise such authority in the same manner and under the same Code sections which provide for the construction of state-aid roads in this state. (Ga. L. 1967, p. 604, § 2; Ga. L. 1969, p. 982, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 25 Am. Jur. 2d, Easements and Licenses in Real Property, § 13 et seq. 26 Am. Jur. 2d, Eminent Domain, §§ 87, 95, 342. 39 Am. Jur. 2d, Highways, Streets, and Bridges, §§ 32, 33, 191 et seq.

C.J.S. — 28A C.J.S., Easements, § 21 et seq. 29A C.J.S., Eminent Domain, §§ 65, 115, 126, 144, 171, 172. 39A C.J.S., Highways, §§ 1, 2, 27, 116, 134 et seq.

32-3-32. Acquisition of fee simple title; designation on official county map.

The rights of way acquired by the department may, at the option of the department, be a fee simple title; and the nature and extent of the rights of way and easements so acquired shall be designated upon an official county map showing the location of the rights of way across each county in this state. (Ga. L. 1967, p. 604, § 5; Ga. L. 1969, p. 982, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 25 Am. Jur. 2d, Easements and Licenses in Real Property, § 11. 26 Am. Jur. 2d, Eminent Domain, §§ 87, 101. 27 Am. Jur. 2d, Eminent Domain, § 823 et seq.

C.J.S. — 29A C.J.S., Eminent Domain, § 622. 39A C.J.S., Highways, § 135.

32-3-33. Inclusion of scenic easements in rights of way.

The department may acquire scenic easements; and these may be included as part of the rights of way to be acquired by the department for federal parkways in those cases mutually acceptable to the depart-

ment and the United States government or its appropriate agency. (Ga. L. 1967, p. 604, § 3; Ga. L. 1969, p. 982, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 25 Am. Jur. 2d, Easements and Licenses in Real Property, § 6. 26 Am. Jur. 2d, Eminent Domain, §§ 155, 157, 158, 191, 192, 194. 39 Am. Jur. 2d, Highways, Streets, and Bridges, §§ 200 et seq., 208, 350.

C.J.S. — 28A C.J.S., Easements, §§ 53, 82, 114. 29A C.J.S., Eminent Domain, §§ 115, 141. 39A C.J.S., Highways, § 140.

32-3-34. Amount of land to be acquired for rights of way.

(a) The lands and interest in lands to be acquired in fee simple for federal parkway rights of way shall average not more than 125 acres per mile plus not more than 25 acres per mile in scenic easements; and in no case shall the width of the fee simple rights of way for federal parkway land be less than 300 feet. It is the intent of this Code section that in using the acreage per mile method there will be permitted the balancing of the total acreage over the entire length of the federal parkway project within the state and that such usage will provide for flexibility to narrow or widen the fee simple lands acquired for federal parkways to meet specific conditions.

(b) The variance of the width of the lands to be acquired by the department for federal parkways is to be dependent upon topographical conditions; requirements of federal parkway design; acquisition of acreage adjacent to the federal parkway at designated locations of scenic, historic, or recreational value or significance; simplicity and ease of rights of way acquisition; cost of rights of way acquisition; and other conditions considered by the department to be controlling; but in no case shall the width of the fee simple rights of way to be acquired for federal parkways be less than the 300 feet provided for in this Code section. (Ga. L. 1967, p. 604, § 4; Ga. L. 1969, p. 982, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 25 Am. Jur. 2d, Easements and Licenses in Real Property, §§ 64, 77. 27 Am. Jur. 2d, Eminent Domain, § 841. 39 Am. Jur. 2d, Highways, Streets, and Bridges, § 193.

C.J.S. — 28A C.J.S., Easements, § 95. 39A C.J.S., Highways, § 138.

ALR. — Width of way created by express grant, reservation, or exception not specifying width, 28 ALR2d 253.

32-3-35. Access for private roads.

The acquisition of rights of way by the department for federal parkways shall permit no reservations or interests of access for private roads connecting to or crossing the federal parkways; and the depart-

ment shall acquire, as part of the rights of way for federal parkways, the rights and interests of access for private roads. (Ga. L. 1967, p. 604, § 7; Ga. L. 1969, p. 982, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 26 Am. Jur. 2d, Eminent Domain, §§ 69, 70.

C.J.S. — 29A C.J.S., Eminent Domain, § 33.

32-3-36. Conveyance of title to rights of way to United States government or its appropriate agency.

The department is authorized and empowered to convey such title or interest as is acquired for federal parkway rights of way to the United States government or its appropriate agency, free and clear of all claims for compensation. (Ga. L. 1967, p. 604, § 6; Ga. L. 1969, p. 982, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 26 Am. Jur. 2d, Eminent Domain, §§ 17, 88, 90, 112, 147, 173, 174, 271 et seq., 289, 318. 27 Am. Jur. 2d, Eminent Domain, §§ 414, 415, 430, 431 et seq.

C.J.S. — 29A C.J.S., Eminent Domain, §§ 20, 88, 100, 101, 115, 219 et seq.

32-3-37. Use of property before final condemnation; enforcement of Code section.

(a) When areas of land or interests in land have been tentatively designated by the United States government to be included within federal parkways but the final survey and plans necessary for the construction of federal parkways as provided by law have not yet been made, no person shall cut or remove any timber from such areas as so designated pending the completion and finalization of such survey and plans after receiving notice from the department that such area is under investigation. Any property owner who suffers loss or damage by reason of the restraint upon his right to use the timber upon his land pending such investigation and the finalization of survey and plans for the construction of federal parkways shall be entitled to recover compensation from the department for the temporary appropriation of his property and for any damage to his property caused by such temporary appropriation, in the event the same is not finally included within the area designated as a federal parkway.

(b) The provisions of this Code section may be enforced under the same law now applicable for the adjustment and payment of compensation in the acquisition of rights of way for present or future public road or other transportation purposes. (Ga. L. 1967, p. 604, § 9; Ga. L. 1969, p. 982, § 1.)

32-3-38. Advertisement restrictions near parkways.

(a) No advertisement or advertising structure shall be erected, constructed, installed, maintained, or operated within 500 feet of the boundary of any federal parkway rights of way acquired by the department under this article except as follows:

(1) Advertisements which are securely attached to a place of business or residence which does not exceed one advertising structure with a total area not to exceed 100 square feet may be erected or maintained or caused to be erected or maintained by the owner or lessee of such place of business or residence within 150 feet of such place of business or residence if and only if the advertisement or advertising structure relates solely to merchandise, services, or entertainment sold, produced, manufactured, or furnished at such place of business or residence;

(2) Signs may be erected or maintained or caused to be erected or maintained on any farm by the owner or lessee of such farm if and only if such signs relate solely to farm produce, merchandise, services, or entertainment sold, produced, manufactured, or furnished on such farm and when the signs so erected or maintained do not exceed two in number with a combined total area not to exceed 150 square feet;

(3) Signs may be posted or displayed upon real property by the owner, or by the authority of the owner, stating that the property upon which the sign is located, or a part of such property, is for sale or rent; and such signs, when so posted or displayed, may state any data pertaining to such property and its appurtenances and the name and address of the owner and the agent of such owner;

(4) Notice of any railroad, bridges, ferries, or other transportation or transmission company may be posted or displayed when found necessary in the discretion of the commissioner;

(5) A sign containing 16 square feet or less and bearing an announcement of any county, town, village, or city, or historic place or shrine, which is situated in this state, advertising itself or local industries, meetings, buildings, or attractions, may be posted or displayed, provided that the sign is maintained wholly at public expense or at the expense of such historic place or shrine;

(6) Historic markers erected by duly constituted and authorized public authorities may be posted or displayed; and

(7) Highway markers and signs erected or caused to be erected by the commissioner or other authorities, in accordance with the law, may be posted or displayed.

(b) Any person who violates the advertising restrictions of this Code section or any lawful regulation promulgated by the department under authority of this Code section shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in Code Section 32-6-91. The department is authorized to use the remedies set forth in Code Sections 32-6-93, 32-6-94, and 32-6-96, in order to enforce the advertising restrictions set forth in this Code section. (Ga. L. 1967, p. 604, § 10; Ga. L. 1969, p. 982, § 1.)

Cross references. — Control of advertising, informational, directional, and other signs generally, § 32-6-50 et seq.

Administrative rules and regulations. — Granting, renewal, and revoca-

tion of permits for outdoor advertising, Official Compilation of the Rules and Regulations for the State of Georgia, Department of Transportation, Chapter 672-6 et seq.

RESEARCH REFERENCES

Am. Jur. 2d. — 3 Am. Jur. 2d, Advertising, §§ 2, 5 et seq., 14 et seq., 26 et seq. 40 Am. Jur. 2d, Highways, Streets, and Bridges, § 324.

C.J.S. — 40 C.J.S., Highways, § 245.

ALR. — Municipality's power to permit private owner to construct building or structure overhanging or crossing the air space above public street or sidewalk, 76 ALR2d 896.

Validity and construction of provision prohibiting or regulating advertising sign overhanging street or sidewalk, 80 ALR3d 687.

Validity and construction of statute or ordinance restricting outdoor rate advertising by motels, motor courts, and the like, 80 ALR3d 740.

32-3-39. Concurrent jurisdiction conceded to United States government; taxing power of state reserved.

The State of Georgia, by this article, does concede concurrent jurisdiction to the United States government or its appropriate agency for rights of way and the lands or interest in lands conveyed to the United States government for federal parkway purposes under this article. However, the State of Georgia expressly reserves the taxing power as applied to all persons, property, or operations within the federal parkway rights of way except as applied to the property of and the operations of the United States government and its agencies. (Ga. L. 1967, p. 604, § 8; Ga. L. 1969, p. 982, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 26 Am. Jur. 2d, Eminent Domain, §§ 17 et seq., 88, 90, 105, 109. 77 Am. Jur. 2d, United States, § 33 et seq.

C.J.S. — 91 C.J.S., United States, § 9 et seq.

CHAPTER 4

STATE, COUNTY, AND MUNICIPAL ROAD SYSTEMS

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		32-4-123. Other laws applicable to part.

Cross references. — Toll road and toll bridge licenses issued by counties and municipalities, § 36-60-21. Public works bidding, § 36-91-1 et seq. Public bridge franchise issued by state, § 44-8-10.

Law reviews. — For annual survey article on local government law, see 50 Mercer L. Rev. 263 (1998).

RESEARCH REFERENCES

Am. Jur. Trials. — Actions Against Road Contractors for Inadequate Warning of Construction Hazards, 72 Am. Jur. Trials 215.

ARTICLE 1
GENERAL PROVISIONS

32-4-1. Classification of public roads.

For purposes of jurisdiction and administration, the public roads of Georgia shall be divided and classified in accordance with the three types of classifications provided in this Code section:

- (1) **State highway system.** The state highway system shall consist of those public roads which on July 1, 1973, are shown by the records of the department to be "state-aid roads," those public roads thereafter designated by the department as part of the state highway system, and all of The Dwight D. Eisenhower System of Interstate and Defense Highways within the state;
- (2) **County road systems.** Each county road system shall consist of those public roads within that county, including county roads extending into any municipality within the county, which are shown to be part of that county road system by the department records on July 1, 1973, and any subsequent additions to such county road system made by the county;

(3) **Municipal street systems.** Each municipal street system shall consist of those public roads within the limits of that municipality which are not in any other classification under this Code section. (Code 1933, § 95A-201, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 2000, p. 136, § 32.)

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 69-301, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section.

Road may become public without department recording road in county road system. — Failure of the Department of Transportation to record a particular road as being a part of the county road system does not determine whether such road becomes a public road by prescription. *Jordan v. Way*, 235 Ga. 496, 220 S.E.2d 258 (1975).

Circular airport roadway not street. — Roadway in the form of a circle, situated wholly within the limits of a municipal airport, is not a city "street." *Mayor of Savannah v. Lyons*, 54 Ga. App. 661, 189 S.E. 63 (1936) (decided under former Code 1933, § 69-301).

Cited in *Georgia DOT v. Smith*, 210 Ga. App. 741, 437 S.E.2d 811 (1993); *City of Social Circle v. Sims*, 228 Ga. App. 582, 492 S.E.2d 240 (1997); *DOT v. Carr*, 254 Ga. App. 781, 564 S.E.2d 14 (2002); *Murray v. Ga. DOT*, 284 Ga. App. 263, 644 S.E.2d 290 (2007).

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Deeding privately-owned road or driveway to county. — Merely deeding privately owned road or driveway to county will not necessarily turn that private property into a public road. 1980 Op. Att'y Gen. No. U80-37.

When county must maintain roads annexed into municipalities. — Because the county must maintain roads on the county road system and because public roads are not removed from the system by mere annexation into a municipality where the road lies, the county must continue to maintain roads on the county road system which are in areas annexed

into a municipality until the governing authority of the county removes the roads from the county road system by appropriate action. 1976 Op. Att'y Gen. No. U76-21.

Contract for improvement of county road located in municipality. — County may, by contract, obtain the cooperation of a municipality in the right-of-way acquisition for, and construction and maintenance of, a county road located within the municipality, but the county cannot require this of a municipality absent an appropriate contract. 1986 Op. Att'y Gen. No. U86-27.

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Highways, Streets, and Bridges, § 3.

C.J.S. — 39A C.J.S., Highways, § 1.

ALR. — Responsibility of county for injury from defect in highway, 2 ALR 721. Term "highway" in statutory provision

relative to vehicle traffic as including street, 54 ALR 1250.

Jurisdiction and power in respect of street road which is part of, or touches upon, a state or federal highway, 144 ALR 307.

32-4-2. Official map, list, and records; rules and regulations.

(a)(1) The department shall prepare an official map showing all public roads on the state highway system. Changes to the state highway system shall be recorded on this map as soon as is reasonably possible; and such map, as it is periodically revised, shall be filed with the Secretary of State and shall be open for public inspection. As often as reasonably possible but not less than once every five years, the department shall also prepare and distribute to each county a map showing all the public roads on its county road system including extensions into municipalities.

(2)(A) The department shall prepare an official list of all portions or features of the state highway system, including without limitation public roads, bridges, or interchanges, which have been named by Act or resolution of the General Assembly or by resolution of the State Transportation Board. The department shall update the list to reflect any additions or changes as soon as is reasonably possible; and such list, as periodically revised, shall be open for public inspection. For each such named portion or feature of the state highway system, the list shall specify without limitation the official name; the state highway system route number; the name of each county wherein the named portion or feature is located; a citation to the Act or resolution of the General Assembly or the resolution of the State Transportation Board officially naming such portion or feature; and a brief biographical, historical, or other relevant description of the person, place, event, or thing commemorated by such naming.

(B) The department may contract with a state historical society to make such list available in electronic format free of charge to Internet users, provided that any web page providing such list pursuant to this subparagraph shall be searchable without limitation by county name.

(b) The department shall keep written records of the mileage on all public roads on the state highway system and on all public roads on each of the county road systems. These written records shall be revised as soon as is reasonably possible after any changes to the above public road systems. They shall indicate whether roads are paved or unpaved and shall contain information as to the condition, status, type, and use of all such public roads and such other information as deemed necessary for sound, long-range planning of public road construction and maintenance. These records shall be made available to each county and to the public.

(c) The department may provide reasonable rules and regulations for keeping accurate and up-to-date, between official measurements, the

mileage record called for in this Code section. Each county shall comply with such rules and regulations.

(d) Not more often than every four years, a county may request an official measurement of its county road system under the rules and regulations of the department; and the department shall comply with such a request if properly made. Whenever a mileage measurement is to be made in any county, whether in response to a request or in the regular course of measurement for the records of the department, the county shall furnish a representative to accompany the representatives of the department in its measurement. In case of disagreement between the department representative and the county representative as to their findings, the matter shall be referred to the commissioner, whose decision as to the facts thereof shall be final and conclusive. The distribution of the county grants based on public road mileage of the county road system shall be made on the basis of the latest official mileage record for each county as shown by department records at the end of the preceding fiscal year.

(e) The official record of the state highway system shall consist of an official map, as provided for in subsection (a) of this Code section, and a written record, as provided for in subsection (b) of this Code section, the written record to have priority in case of conflict between the two. Resolutions of the board designating a road as part of the state highway system, as provided for in Code Section 32-4-21, and certifications of abandonment, as provided for in subsection (a) of Code Section 32-7-2, shall serve as the official record until such changes are recorded on the official map and in the written record.

(f) The official record of a county road system shall consist of an official map, as provided for in subsection (a) of this Code section, and a written record, as provided for in subsection (b) of this Code section, the written record to have priority in case of conflict between the two. The minutes of the county containing resolutions designating roads as a part of a county road system, as provided for in Code Section 32-4-40, and certifications of abandonment, as provided for in subsection (b) of Code Section 32-7-2, shall serve as the official record until such changes are recorded on the official map and in the written record.

(g) For purposes of this chapter, state maps and written records shall only be maintained on public roads which are open to public travel. (Orig. Code 1863, § 578; Code 1868, § 642; Code 1873, § 603; Code 1882, § 603; Ga. L. 1890-91, p. 134, § 1; Civil Code 1895, § 516; Civil Code 1910, § 636; Code 1933, § 95-108; Code 1933, § 95A-204, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 2000, p. 1304, § 1; Ga. L. 2001, p. 4, § 32; Ga. L. 2009, p. 8, § 32/SB 46; Ga. L. 2011, p. 583, § 4/HB 137.)

The 2011 amendment, effective July 1, 2011, deleted “and the number of each five-digit postal ZIP Code area” following “each county” in the third sentence of

subparagraph (a)(2)(A); deleted “or five-digit postal ZIP Code” following “name” at the end of subparagraph (a)(2)(B); and added subsection (g).

JUDICIAL DECISIONS

Width of road determinations. — When the county has no road register, and the road at issue has never been laid out by the county, registered, or classified, the road’s width must be determined by the prescriptive use of the road. *Turner v. Brown*, 234 Ga. 605, 216 S.E.2d 853 (1975).

Removal of road from official map. — After the Department of Transporta-

tion removed a road from the official map for the state highway system and placed the road on the official map for the county road system and the county adopted a resolution accepting the road, the evidence established that the department had no obligation to maintain the road. *Georgia DOT v. Smith*, 210 Ga. App. 741, 437 S.E.2d 811 (1993).

OPINIONS OF THE ATTORNEY GENERAL

When county must maintain roads annexed into municipalities. — Because the county must maintain roads on the county road system and because public roads are not removed from the system by mere annexation into a municipality where the road lies, the county must con-

tinue to maintain roads on the county road system which are in areas annexed into a municipality until the governing authority of the county removes the roads from the county road system by appropriate action. 1976 Op. Att’y Gen. No. U76-21.

32-4-3. Naming state roads, bridges, or interchanges.

No state agency shall name or rename any state road, bridge, interchange, or any part of a road in honor of, or with the name of, any person unless such action is approved by a joint resolution or Act of the General Assembly which is approved by the Governor or becomes law without such approval. This Code section shall not apply to a political subdivision of the state naming any road which is under the jurisdiction of such political subdivision. (Code 1981, § 32-4-3, enacted by Ga. L. 2002, p. 415, § 32.)

Cross references. — Specific powers of General Assembly, Ga. Const. 1983, Art. III, Sec. VI, Para. II.

Editor’s notes. — The provisions of this Code section were previously enacted in substantially similar form by Ga. L. 2001, p. 1215, § 2.

Ga. L. 2006, p. 72, § 32A/SB 465, not

codified by the General Assembly, provided for the repeal of Ga. L. 2001, p. 1215, § 2, which section has been codified as and superceded by Code Section 32-4-3, relating to naming state roads, bridges, or interchanges, and which Code section shall remain effective.

32-4-4. Determination by entity on asbestos pipe; removal and disposal; status of facility.

(a) As used in this Code section, the term “entity” means a county, a municipality, a consolidated government, or a local authority.

(b) Whenever existing utility facilities owned and operated by an entity contain asbestos pipe and such facility exists in the public rights of way of any highway, road, or street authorized pursuant to this title, and the entity determines that such facility should no longer be utilized, the entity that owns and operates the utility facility shall file a notice of abandonment with the department if the facility is located upon the public rights of way under the authority of the department. Upon abandonment, the entity shall have the discretion to:

(1) Remove and dispose of the asbestos pipe in accordance with federal laws and regulations;

(2) Leave the asbestos pipe in place and fill it with grout or other similar substance designed to harden within the pipe; or

(3) Allow the pipe to remain undisturbed in the ground and take no further action.

(c) At the request of the department or entity, any asbestos pipe left in the right of way as authorized by subsection (b) of this Code section shall be marked so as to be locatable.

(d) The entity shall not relinquish the ownership of said facility as stated in subsection (h) of Code Section 25-9-7 and Code Section 32-6-174. The facility shall be deemed abandoned and out of service. (Code 1981, § 32-4-4, enacted by Ga. L. 2009, p. 302, § 1/ HB 101; Ga. L. 2011, p. 583, § 5/ HB 137.)

The 2011 amendment, effective July 1, 2011, in subsection (b), in the first sentence, substituted “such facility” for “such pipe” in two places, substituted “public rights of way of any highway, road, or street” for “rights of way of any road, bridge, or other transportation project”, added “file a notice of abandonment with the department if the facility is located upon the public rights of way under the authority of the department” at the end,

and added “Upon abandonment, the entity shall” at the beginning of the second sentence; and substituted the present provisions of subsection (d) for the former provisions, which read: “Any costs, claims, or other liability associated with the entity’s decision pursuant to subsection (b) of this Code section shall be borne by the entity and may be subject to offset by the department.”

ARTICLE 2

STATE HIGHWAY SYSTEM

32-4-20. Composition of state highway system.

The state highway system shall consist of an integrated network of arterials and of other public roads or bypasses serving as the major collectors therefor. No public road shall be designated as a part of the state highway system unless it meets at least one of the following requirements:

- (1) Serves trips of substantial length and duration indicative of regional, state-wide, or interstate importance;
- (2) Connects adjoining county seats;
- (3) Connects urban or regional areas with outlying areas, both intrastate and interstate;
- (4) Serves as part of the principal collector network for the state-wide and interstate arterial public road system; or
- (5) Serves as part of a programmed road improvement project plan in which the department will utilize state or federal funds for the acquisition of rights of way. (Code 1933, § 95A-202, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 2012, p. 1343, § 5/HB 817.)

The 2012 amendment, effective July 1, 2012, deleted “or” at the end of paragraph (3); substituted “road system; or” for “roads” at the end of paragraph (4); and added paragraph (5).

Cross references. — Giving of notice of intention to condemn road constituting part of state highway system for purpose of constructing electric power plant, § 22-3-42.

JUDICIAL DECISIONS

Road not part of state highway system. — Trial court did not err in granting the Georgia Department of Transportation (DOT) summary judgment in a driver’s action alleging that the department negligently maintained a dirt road because the road was not a part of the state highway system since the road did not meet any of the four requirements of O.C.G.A. § 32-4-20, and the DOT had no

duty to maintain the road; the dirt road was a dead-end loop that led back to a county road and was part of a right-of-way that was fenced off from the travel lanes of an interstate, and at some point before the incident, access to the road had been restricted by a gate. *Barrett v. Ga. DOT*, 304 Ga. App. 667, 697 S.E.2d 217, cert. denied, No. S10C1813, 2010 Ga. LEXIS 918 (Ga. 2010).

32-4-21. Designation of roads as part of state highway system.

Whenever the board, or the commissioner when the board is not in session, deems it necessary and in the public interest to have a new or existing public road designated as part of the state highway system,

whether as additional mileage or as part of a substitution or relocation, the board, by resolution, or the commissioner, by written notice to the board, may designate such road to be a part of the state highway system. If the road proposed to be designated is a part of either a county road system or a municipal street system, the department shall give written notice to the county or municipality of the effective date that such road shall become part of the state highway system. Any change on the state highway system by designation shall be recorded on the official map and in the written records of the state highway system, as provided for in subsections (a) and (b) of Code Section 32-4-2. (Laws 1818, Cobb's 1851 Digest, p. 947; Code 1863, §§ 579, 580; Code 1868, §§ 643, 644; Code 1873, §§ 604, 605; Code 1882, §§ 604, 605; Civil Code 1895, §§ 520, 521; Civil Code 1910, §§ 640, 641; Code 1933, §§ 95-201, 95-202; Code 1933, § 95A-202, enacted by Ga. L. 1973, p. 947, § 1.)

JUDICIAL DECISIONS

Removal of road from official map.

— After the Department of Transportation removed a road from the official map for the state highway system and placed the road on the official map for the county road system and the county adopted a resolution accepting the road, the evidence established that the department had no obligation to maintain the road. *Georgia DOT v. Smith*, 210 Ga. App. 741, 437 S.E.2d 811 (1993).

Liability for maintenance of road when written notice not given.

— Georgia Department of Transportation was responsible for maintaining a bypass on a road because the department had taken over maintenance of the road even though the department had not yet given the statutory written notice of the road becoming a part of the state highway system. *DOT v. Carr*, 254 Ga. App. 781, 564 S.E.2d 14 (2002).

32-4-22. Creation of Developmental Highway System.

(a) There is created as a part of the state highway system a system of public roads to be known as the Developmental Highway System which shall consist of the following road corridors (not in order of priority):

- (1) Appalachian;
- (2) The South Georgia Parkway;
- (3) U.S. 27;
- (4) U.S. 82;
- (5) Golden Isles;
- (6) Savannah River;
- (7) U.S. 441;
- (8) Fall Line;

- (9) U.S. 319;
- (10) U.S. 19;
- (11) U.S. 84;
- (12) U.S. 1/SR 17;
- (13) SR 72;
- (14) Northern Arc further identified as the North Georgia Connector between the U.S. Highway 411 and U.S. Highway 41 interchange in Bartow County to State Highway 316 in Gwinnett County;
- (15) East-west Highway from I-59 North to I-85 North;
- (16) Truck access routes, including without limitation:
 - (A) SR 133 from Albany to Valdosta;
 - (B) SR 40 from Folkston to St. Marys; and
 - (C) SR 125 from Fitzgerald to I-75;
- (17) SR 32;
- (18) Power Alley, U.S. 280 from Columbus to Savannah;
- (19) SR 125 from its intersection with SR 107 in Ben Hill County (Fitzgerald Bypass) to its intersection with SR 32 in Irwin County; and
- (20) SR 15 from its intersection with US 441/SR 24 at Watkinsville to its intersection with US 1 in Toombs County.

Without limiting the foregoing, said system is further identified as including those roads and corridors referred to as "the Governor's Road Improvement Program" in that resolution adopted by the State Transportation Board dated November 17, 1988.

(b) The location and mileage of the Developmental Highway System shall be as generally described in subsection (a) of this Code section, with the power of the State Transportation Board to make such variances therein as shall be dictated by sound engineering and construction practices.

(c) The Developmental Highway System shall be under the control and supervision of the board, subject to the provisions of this Code section or any other Act of the General Assembly; provided, however, that the State Road and Tollway Authority is authorized to construct all or any part of such system and to enter into agreements with the department, pursuant to Code Section 32-2-61, for such purpose. Any project the cost of which is paid from the proceeds of garvee bonds as defined in Code Section 32-10-90.1 shall be, pursuant to a contract or

agreement between the authority and the department, planned, designed, and constructed by the Department of Transportation or a contractor contracting with the Department of Transportation. (Code 1981, § 32-4-22, enacted by Ga. L. 1989, p. 221, § 1; Ga. L. 1994, p. 701, § 1; Ga. L. 2001, p. 1215, § 1; Ga. L. 2001, p. 1251, § 1-3; Ga. L. 2005, p. 320, § 1/SB 107.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2009, a punctuation change was made at the beginning of paragraph (a)(2).

Law reviews. — For note on 1989 enactment of this Code section, see 6 Ga. St. U.L. Rev. 257 (1989).

32-4-23. Council on Rural Transportation and Economic Development; creation and membership; powers, duties, and authority; funding; expense allowances; repeal.

Reserved. Repealed by Ga. L. 1997, p. 976, § 1, effective March 31, 2000.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2007, this Code section number was designated as reserved.

Editor's notes. — This Code section was based on Code 1981, § 32-4-23, enacted by Ga. L. 1996, p. 1512, § 1; Ga. L. 1997, p. 976, § 1.

32-4-24. Alternative tourism routes; welcome centers authorized.

(a) The board shall designate as alternative tourism routes roads that are a part of the state highway system that traverse the state and pass through or in close proximity to historic sites or tourist attractions in the state. Interstate highways that traverse the state shall not be eligible for designation as an alternative tourism route. The initial alternative tourism routes shall be U.S. Highway 27 and U.S. Highway 441.

(b) The board shall consult with the Department of Economic Development, county governing authorities, and historical sites and tourist attractions located in this state in the selection of additional alternative tourism routes. The Department of Economic Development shall promote such routes and sites and attractions along such routes to the motoring public.

(c) Subject to the appropriation process, the department may within five years of the designation of an alternative tourism route construct within 20 miles of the state line on each end of such route a welcome center. Subject to the appropriation process, if the department decides to construct such a center, it shall negotiate and contract with the local governing authorities where the welcome center is located for the maintenance and operation of such center. (Code 1981, § 32-4-24, enacted by Ga. L. 2007, p. 291, § 1/SB 282.)

ARTICLE 3
COUNTY ROAD SYSTEMS

Cross references. — Application for and issuance of writ of mandamus against county board of commissioners or probate judge to compel building, repair, and maintenance of county roads, § 9-6-21.

Grants to counties for road construction and maintenance, as such grants relate to relief of ad valorem taxation on tangible property in county, § 36-17-20 et seq.

PART 1

GENERAL POWERS AND DUTIES OF COUNTIES

32-4-40. Designation of roads as part of county road system; designation of system on maps and written records of county.

Each county shall, by resolution, designate roads to be a part of its county road system; and such resolutions shall be recorded in the minutes of the county. All such roads shall be laid out on the shortest and best route to their intended destination and with as little injury to private property as possible. When a road has been designated as a part of a county road system, this change shall be recorded on the official map of the county road system, as provided for in subsection (a) of Code Section 32-4-2, and in the written record of the county road system, as provided for in subsection (b) of Code Section 32-4-2. (Laws 1818, Cobb's 1851 Digest, p. 951; Code 1863, § 584; Code 1868, § 648; Code 1873, § 609; Code 1882, § 609; Civil Code 1895, § 529; Civil Code 1910, § 645; Code 1933, § 95-205; Code 1933, § 95A-203, enacted by Ga. L. 1973, p. 947, § 1.)

JUDICIAL DECISIONS

Acceptance of transfer of state road. — After the Department of Transportation removed a road from the official map for the state highway system and placed the road on the official map for the county road system and the county ad-

opted a resolution accepting the road, the evidence established that the department had no obligation to maintain the road. Georgia DOT v. Smith, 210 Ga. App. 741, 437 S.E.2d 811 (1993).

32-4-41. Duties.

The duties of a county with respect to its county road system, unless otherwise expressly limited by law, shall include but not be limited to the following:

- (1) A county shall plan, designate, improve, manage, control, construct, and maintain an adequate county road system and shall have control of and responsibility for all construction, maintenance,

or other work related to the county road system. Such work may be accomplished through the use of county forces, including inmate labor, by contract as authorized in paragraph (5) of Code Section 32-4-42, or otherwise as permitted by law. Nothing in this paragraph shall be construed to prevent a county from entering into a contract providing for a municipality to maintain an extension of the county road system within the municipal limits;

(2) A county shall control, administer, and account for funds received for the county road system and activities incident thereto from any source whatsoever, whether federal, state, county, municipal, or any other; and it shall expend such funds for and on behalf of the county in connection with the county road system and for any purpose in connection therewith which may be authorized in this title or by any other law;

(3) A county shall inspect and determine the maximum load, weight, and other vehicular dimensions which can be safely transported over each bridge on the county road system and shall post on each bridge and on each approach thereto on the county road a sign containing a legible notice showing such maximum safe limits, each such sign to conform to the department regulations promulgated under authority of Code Section 32-6-50. However, the department is authorized to give technical assistance to counties, when so requested, in carrying out this paragraph. It shall be unlawful for any person to haul, drive, or bring on any bridge any vehicle, load, or weight which in any manner exceeds the maximum limits so ascertained and posted on such bridge; and any person hauling, driving, or otherwise bringing on such bridge any load or weight exceeding the maximum limits so ascertained and posted shall do so at his own risk; and the county shall not be liable for any damages to persons or property that may result therefrom;

(4) A county shall keep on file in the office of the county clerk, available for public inspection, the map of the county road system prepared by the department as provided for in subsection (a) of Code Section 32-4-2. In addition to keeping on file a map of the county road system, the county shall notify the department within three months after a county road is added to the local road or street system and shall further notify the department within three months after a local road or street has been abandoned. This notification shall be accompanied by an appropriate digital file, map, or plat depicting the location of the new or abandoned road;

(5) A county shall procure the necessary rights of way for public roads of the state highway system within the county in compliance with subsection (e) of Code Section 32-3-3 and Code Section 32-5-25; and

(6) In acquiring property for rights of way for federal-aid highway projects on its county road system, the county shall comply with the requirements of the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970, as amended by the Uniform Relocation Act Amendments of 1987, Title IV of Public Law 100-17, and in general shall be guided by the policies applicable to the department as set forth in Code Section 32-8-1. (Code 1933, § 95A-401, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1980, p. 775, § 5; Ga. L. 1981, p. 953, § 1; Ga. L. 1988, p. 1737, § 1; Ga. L. 1998, p. 1206, § 1; Ga. L. 2011, p. 583, § 6/HB 137.)

The 2011 amendment, effective July 1, 2011, substituted “an appropriate digital file, map, or plat” for “a map or plat” in the last sentence of paragraph (4).

Cross references. — Weight of vehicle and load, § 32-6-26. Designated local truck route signs, § 32-6-50.

U.S. Code. — The Uniform Relocation System and Real Property Acquisition Policy Act of 1970, referred to in this Code section, is codified as 42 U.S.C. ch. 61.

JUDICIAL DECISIONS

Editor’s notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, Ch. 95-9 and § 95-1721, and former Ga. L. 1955, p. 124, as amended, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section.

Constitutional to require county authorities to maintain roads. — Requiring county authorities to maintain roads did not violate state constitutional provisions dealing with the creation of debts since counties are granted authority to build and maintain roads and to levy taxes for such purposes. *State v. Georgia Rural Rds. Auth.*, 211 Ga. 808, 89 S.E.2d 204 (1955) (decided under former Ga. L. 1955, p. 124, as amended).

Constitutional to require county to build and maintain bridges. — It is the duty of county authorities to construct and maintain bridges across streams in a workmanlike and proper manner so that any person may use the bridges in safety in ordinary travel. *DeKalb County v. Brewer*, 107 Ga. App. 231, 129 S.E.2d 540 (1963), later appeal, 111 Ga. App. 269, 141 S.E.2d 234 (1965) (decided under former Code 1933, Ch. 95-9).

No liability for defective bridges. — There is no language in O.C.G.A.

§ 32-4-41 specific enough to waive sovereign immunity and make a county liable for the county’s defective bridges. *Kordares v. Gwinnett County*, 220 Ga. App. 848, 470 S.E.2d 479 (1996).

Duty to install signs. — In a personal injury action, contractor had no duty to protect the plaintiff from dangerous or defective conditions caused by others; the county, not the contractor, had the obligation to install the signs which the plaintiff claimed were necessary. *Purvis v. Virgil Barber Contractor*, 205 Ga. App. 13, 421 S.E.2d 303 (1992).

When an injured party sued the Georgia Department of Transportation (DOT) for injuries received in a single-car accident on a county road, the party could not maintain a negligent maintenance claim against DOT because the road on which the accident occurred was not part of the state highway system, nor did the road lead to a state park; thus, under O.C.G.A. § 32-4-41(1), the county was obligated to maintain the road and, under O.C.G.A. § 32-2-61(e), DOT’s contract with the county to improve the road did not relieve the county of this responsibility. *Ogles v. E.A. Mann & Co.*, 277 Ga. App. 22, 625 S.E.2d 425 (2005).

Constitutional to require county to secure rights of way. — In the construc-

tion of state-aid roads by the State Highway Board (now Transportation Board), it is the duty of the county authorities having control of county roads to assist in procuring the necessary rights of way. *Martin v. Fulton County*, 213 Ga. 761, 101 S.E.2d 716 (1958) (decided under former Code 1933, § 95-1721).

Extent of right-of-way. — County could only acquire by prescription a right-of-way over that which was actually used as a roadway, and the standard 30 foot width on which the county relied was applicable only to roads which were formally acquired by the county. *Clack v. Henry County*, 261 Ga. 623, 409 S.E.2d 647 (1991).

Only the right-of-way actually acquired could be included in the roadway. *Clack v. Henry County*, 261 Ga. 623, 409 S.E.2d 647 (1991).

Authority to develop asphalt facilities. — Given the general and broad powers of counties authorized by Ga. Const. 1976, Art. IX, Sec. V, Para. II (see now Ga. Const. 1983, Art. IX, Sec. IV) and this section to levy taxes and expend funds for the construction and maintenance of roads, it is reasonable to imply that the authority can develop facilities for the production of asphalt for use in the county

road system. *Ledbetter Bros. v. Floyd County*, 237 Ga. 22, 226 S.E.2d 730 (1976) (see O.C.G.A. § 32-4-41).

Historical use as public road. — County's right to the roadway depends on the historical use of the roadway as a public road, not on any express grant of the property to the county or on any express dedication of the property for use as a roadway. *Clack v. Henry County*, 261 Ga. 623, 409 S.E.2d 647 (1991).

Assumption of duty. — After the trial court correctly interpreted contract provisions as only requiring the defendant to install traffic control devices, or to take preventative or corrective action when traffic related problems were caused from preexisting hazards or by the defendant's construction activities, the defendant did not undertake to perform the duties under paragraph (1) of O.C.G.A. §§ 32-4-41 and 32-6-50(c). *Adams v. APAC-Georgia, Inc.*, 236 Ga. App. 215, 511 S.E.2d 581 (1999).

Cited in Department of Transp. v. Doss, 238 Ga. 480, 233 S.E.2d 144 (1977); *Peluso v. Central of Ga. R.R.*, 165 Ga. App. 215, 299 S.E.2d 51 (1983); *Hendrix v. Department of Transp.*, 188 Ga. App. 429, 373 S.E.2d 264 (1988); *Evans Timber Co. v. Central of Ga. R.R.*, 239 Ga. App. 262, 519 S.E.2d 706 (1999).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, §§ 95-101, 95-102, and 95-801, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section.

Board of education may not maintain roads. — Board of education may not use the board's funds for laying out, altering, maintaining, and improving a public, county-maintained road even though school transportation would be facilitated thereby; it is the sole duty and responsibility of the local officials in charge of county matters to lay out, alter, maintain, and improve the road in the manner the officials deem best suited to the needs of the county. 1962 Op. Att'y Gen. p. 189 (rendered under former Code 1933, §§ 95-101, 95-102, and 95-801).

When county must maintain roads annexed into municipalities. — Because the county must maintain roads on the county road system and because public roads are not removed from the system by mere annexation into a municipality where the road lies, the county must continue to maintain roads on the county road system which are in areas annexed into a municipality until the governing authority of the county removes the roads from the county road system by appropriate action. 1976 Op. Att'y Gen. No. U76-21.

Contract for improvement of county road located in municipality. — County may, by contract, obtain the cooperation of a municipality in the right-of-way acquisition for, and construction and maintenance of, a county road located within the municipality, but the

county cannot require this of a municipality absent an appropriate contract. 1986 Op. Att'y Gen. No. U86-27.

RESEARCH REFERENCES

ALR. — Responsibility of county for injury from defect in highway, 2 ALR 721.

Constitutionality of statutory provisions as to political corporations or divisions which shall bear cost of establishing or maintaining highways, 2 ALR 746; 123 ALR 1462.

Right of way at street or highway intersections, 37 ALR 493; 47 ALR 595.

Duty as regards barriers for protection of automobile travel, 86 ALR 1389; 173 ALR 626.

Personal liability of highway officers for damage to or trespass upon land in connection with construction or maintenance of highway, 90 ALR 1481.

Governmental tort liability as to highway median barriers, 58 ALR4th 559.

Liability of private landowner for vegetation obscuring view at highway or street intersection, 69 ALR4th 1092.

32-4-42. Powers.

The powers of a county with respect to its county road system, unless otherwise expressly limited by law, shall include but not be limited to the following:

(1) A county shall have the authority to negotiate, let, and enter into contracts with any person or any agency, county, or municipality of the state for the construction, maintenance, administration, or operation of any public road or activities incident thereto in such manner and subject to such express limitations as may be provided by Part 2 of this article or any other provision of law. A county shall also have the authority to perform such road work with its own forces or with a combination of its own forces and the work of a contractor, notwithstanding any contrary provisions of Chapter 91 of Title 36;

(2) A county shall have the authority to accept and use federal and state funds and to do all things necessary, proper, or expedient to achieve compliance with the provisions and requirements of all applicable federal-aid or state-aid acts and programs in connection with the county's public roads. Nothing in this title is intended to conflict with any federal law and, in case of such conflict, such portion as may be in conflict with such federal law is declared of no effect to the extent of the conflict;

(3)(A) A county shall have the authority to acquire and dispose of real property or any interest therein for public road purposes, as provided in Article 1 of Chapter 3 of this title and in Chapter 7 of this title. In any action to condemn property or interests therein for such purposes, notice thereof shall be signed by the condemning county; and such notice shall be deemed to be the official action of

the county in regard to the commencement of such condemnation proceedings. For good cause shown a county, at any time after commencement of condemnation proceedings and prior to final judgment therein, may dismiss its condemnation action, provided that (i) the condemnation proceedings have not been instituted under Article 1 of Chapter 3 of this title, and (ii) the condemnor has first paid to the condemnee all expenses and damages accrued to the condemnee up to the date of the filing of the motion for dismissal of the condemnation action.

(B) Pursuant to the requirements of Part 2 of this article, a county shall have the power to purchase, borrow, rent, lease, control, manage, receive, and make payment for all personal property, such as equipment, machinery, vehicles, supplies, material, and furniture, which may be needed in the operation of its county road system; to lease, rent, lend, or otherwise transfer temporarily county property used for road purposes, as authorized by law; to sell or otherwise dispose of all personal property owned by the county and used in the operation of the county road system which is unserviceable; and to execute such instruments as may be necessary in connection with the exercise of the powers described in this subparagraph;

(4) A county and its authorized agents and employees may enter upon any lands in the county for the purpose of making such surveys, soundings, drillings, and examinations as the county may deem necessary or desirable to accomplish the purposes of this title; and such entry shall not be deemed a trespass nor shall it be deemed an entry which would constitute a taking in a condemnation proceeding, provided that reasonable notice of such entry shall be given the owner or occupant of such property, such entry shall be done in a reasonable manner with as little inconvenience as possible to the owner or occupant of the property, and the county shall make reimbursement for any actual damages resulting from such entry;

(5) A county shall have the authority to employ, discharge, promote, set and pay the salaries and compensation of its personnel, and determine the duties, qualifications, and working conditions for all persons whose services are needed in the construction, maintenance, administration, operation, and development of its county road system; to work inmates maintained in the county correctional institution or inmates hired from the Department of Corrections and maintained by the latter; and to employ or contract with such engineers, surveyors, attorneys, consultants, and all other employees as independent contractors whose services may be required, subject to the limitations of existing law;

(6) A county may grant permits and establish reasonable regulations for the installation, construction, maintenance, renewal, re-

moval, and relocation of pipes, mains, conduits, cables, wires, poles, towers, traffic and other signals, and other equipment, facilities, or appliances of any utility in, on, along, over, or under the public roads of the county which are a part of the county road system lying outside the corporate limits of a municipality. However, such regulations shall not be more restrictive with respect to utilities affected thereby than are equivalent regulations promulgated by the department with respect to utilities on the state highway system under authority of Code Section 32-6-174. As a condition precedent to the granting of such permits, the county may require application in writing specifically describing the nature, extent, and location of the portion of the utility affected and may also require the applicant to furnish an indemnity bond or other acceptable security conditioned to pay any damages to any part of the county road system or to any member of the public caused by work of the utility performed under authority of such permit. At all times it shall be the duty of the county to ensure that the normal operation of the utility does not interfere with the use of the county road system. The county may also order the removal or discontinuance of the utility, equipment, facility, or appliances where such removal and relocation are made necessary by the construction or maintenance of any part of the county road system lying outside the corporate limits of a municipality. In so ordering the removal and relocation of a utility or in performing such work itself, the county shall conform to the procedure set forth for the department in Code Sections 32-6-171 and 32-6-173, except that when the removal and relocation have been performed by the county, it shall certify the expenses thereof for collection to its county attorney;

(7) A county shall have the power to purchase supplies for county road system purposes through the state as authorized by Code Sections 50-5-100 through 50-5-102;

(8) In addition to any taxes authorized by Article 4 of Chapter 5 of Title 48 to be levied and collected for the construction and maintenance of its county road system and activities incident thereto, a county is authorized to levy and collect any millage as may be necessary for such purposes;

(9) A county may provide for surveys, maps, specifications, and other things necessary in designating, supervising, locating, abandoning, relocating, improving, constructing, or maintaining the county road system, or any part thereof, or any activities incident thereto or necessary in doing such other work on public roads as the county may be given responsibility for or control of by law;

(10) In addition to the powers specifically delegated to it in this title and except as otherwise provided by Code Section 12-6-24, a county shall have the authority to adopt and enforce rules, regula-

tions, or ordinances; to require permits; and to perform all other acts which are necessary, proper, or incidental to the efficient operation and development of the county road system; and this title shall be liberally construed to that end. Any power vested in or duty placed on a county but not implemented by specific provisions for the exercise thereof may be executed and carried out by a county in a reasonable manner subject to such limitations as may be provided by law; and

(11) In all counties of this state having a population of 550,000 or more according to the United States decennial census of 1970 or any future such census, the county governing authority shall be empowered by ordinance or resolution to assess against any property the cost of reopening, repairing, or cleaning up from any public way, street, road, right of way, or highway any debris, dirt, sediment, soil, trash, building materials, and other physical materials originating on such property as a result of any private construction activity carried on by any developer, contractor, subcontractor, or owner of such property. Any assessment authorized under this paragraph, the interest thereon, and the expense of collection shall be a lien against the property so assessed coequal with the lien of other taxes and shall be enforced in the same manner as are state and county ad valorem property taxes by issuance of a fi. fa. and levy and sale as set forth in Title 48, known as the "Georgia Public Revenue Code." (Code 1933, § 95A-402, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1974, p. 1422, § 13; Ga. L. 1981, p. 3259, §§ 1, 2; Ga. L. 1982, p. 2107, § 28; Ga. L. 1983, p. 3, § 23; Ga. L. 1985, p. 283, § 1; Ga. L. 1991, p. 94, § 32; Ga. L. 2000, p. 498, § 8; Ga. L. 2002, p. 1126, § 2.)

Cross references. — Authority of counties to erect bridges across navigable streams, T. 36, C. 14. Use of parking meter receipts to pay principal, interest, and other expenses of revenue bonds issued to finance public parking areas or public parking buildings, § 36-82-62. Promulgation of rules and regulations governing hiring out of inmates to Department of Transportation, municipalities, counties, and others, § 42-5-60.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1982, "coequal" was substituted for "co-equal" in the last sentence of paragraph (11).

Law reviews. — For annual survey article on real property law, see 52 Mercer L. Rev. 383 (2000). For annual survey of administrative law, see 56 Mercer L. Rev. 31 (2004). For annual survey of local government law, see 56 Mercer L. Rev. 351 (2004).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Civil Code 1895, § 602 and former Civil Code 1910, § 640, which were subsequently repealed but were succeeded by provisions in this Code section are included in the annotations for this Code section.

Utility right of way fee. — County was not entitled to extract from power company a tax, franchise fee, rental fee, or other charge in return for permission to use county road rights of way outside of municipalities for erection, maintenance, and use of power transmission lines. *DeKalb County v. Georgia Power Co.*, 249

Ga. 704, 292 S.E.2d 709 (1982).

County had authority to grant permits and establish reasonable regulations for the installation of pipes, conduits, cables, and wires on the county's public roads; thus, the county had the "necessarily implied authority" to charge companies, such as the telecommunication company, a permit fee for the company's application to use the county's public rights-of-way. Accordingly, the county had the authority to enforce the county's ordinance imposing that fee and furthermore the telecommunication company did not show that the ordinance was unconstitutional. *BellSouth Telecomms., Inc. v. Cobb County*, 277 Ga. 314, 588 S.E.2d 704 (2003).

Control over water mains. — There was nothing in the 1979 Act creating the Coweta County Water and Sewer Authority that extended the county's control over water mains not belonging to the county authority. The county's authority to regulate the City of Newnan's Water, Sewerage and Light Commission's progress into the county was limited only by paragraph (6) of O.C.G.A. § 32-4-42. *Coweta County v. City of Newnan*, 253 Ga. 457, 320 S.E.2d 747 (1984).

When privately built bridge is county bridge. — Bridge constructed by private citizens, part of the material being furnished by the citizens, in accordance

with an agreement with county officials, is a county bridge. *County of Tattnall v. Newton*, 112 Ga. 779, 38 S.E. 47 (1901) (decided under former Civil Code 1895, § 602).

County right to acquire land for state. — County authorities in charge of laying out and constructing public highways can accept lands dedicated by their owners for public roads, and can open and build new public roads therein in cooperation with the State Highway Department (now Department of Transportation) under contract with the federal government. *Lee County v. Mayor of Smithville*, 154 Ga. 550, 115 S.E. 107 (1922) (decided under former Civil Code 1910, § 640).

Authorization to enter arbitration. — O.C.G.A. § 32-4-42 is to be liberally construed to promulgate the efficient operation and development of the county road system; the county was authorized to consent to arbitration as a means of resolving road construction contract disputes. *Bryan County v. Yates Paving & Grading Co.*, 251 Ga. App. 441, 554 S.E.2d 584 (2001).

Cited in *Chatham County Comm'rs v. Seaboard Coast Line R.R.*, 169 Ga. App. 607, 314 S.E.2d 449 (1984); *Georgia Power Co. v. Collum*, 176 Ga. App. 61, 334 S.E.2d 922 (1985); *Bibb County v. Georgia Power Co.*, 241 Ga. App. 131, 525 S.E.2d 136 (1999).

OPINIONS OF THE ATTORNEY GENERAL

Contract for improvement of county road located in municipality.

— County may, by contract, obtain the cooperation of a municipality in the right-of-way acquisition for, and construction and maintenance of, a county road located within the municipality, but the county cannot require this of a municipality absent an appropriate contract. 1986 Op. Att'y Gen. No. U86-27.

Sheriff authorized to enforce traffic regulations. — Counties have authority to regulate amount of weight which may be carried over specific county roads by

ordinances which amount to establishment of truck routes. 1982 Op. Att'y Gen. No. 82-20.

Any city or county ordinances purporting to regulate vehicular weights must not exceed maximum weights permitted by O.C.G.A. § 32-6-26. 1982 Op. Att'y Gen. No. 82-20.

County sheriff's department may enforce ordinances prohibiting trucks over ten wheels from using residential roads within county except when making temporary deliveries. 1996 Op. Att'y Gen. No. U96-17.

RESEARCH REFERENCES

ALR. — Power of eminent domain as between state and subdivision or agency thereof, or as between different subdivisions or agencies themselves, 35 ALR3d 1293.

PART 2

EXERCISE BY COUNTIES OF POWER TO CONTRACT GENERALLY

RESEARCH REFERENCES

ALR. — Construction and effect of “changed conditions” clause in public works or construction contract with state or its subdivision, 56 ALR4th 1042.

32-4-60. “Contract” defined.

As used in this part, the term “contract” means a contract or subcontract entered into by a county with any person, with the state or federal government or an agency of either, with another county or counties, with a municipality or municipalities, or with any combination of the foregoing entities for the construction, reconstruction, or maintenance of all or part of a public road, including but not limited to a contract for the purchase of materials, for the hiring of labor, for professional services, or for other things or services incident to such work. (Code 1933, § 95A-816, enacted by Ga. L. 1973, p. 947, § 1.)

Law reviews. — For survey article on construction law for the period from June 1, 2002 through May 31, 2003, see 55 Mercer L. Rev. 85 (2003).

32-4-61. Authority of county to contract; form of contracts; approval of contracts by resolution.

A county shall have the authority to contract as set forth in this part and in paragraph (1) of Code Section 32-4-42. Any contract for work on all or part of the county road system shall be in writing and shall be approved by resolution which shall be entered on the minutes of such county. (Code 1933, § 95A-817, enacted by Ga. L. 1973, p. 947, § 1.)

JUDICIAL DECISIONS

Editor’s notes. — In light of the similarity of the statutory provisions, decisions under former Ga. L. 1937, p. 912, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section.

When petition for relief sufficient. — Petition alleging that county commis-

sioners had entered into contracts with one of the commissioner’s members for the construction of roads in the county without contracts being in writing and entered on the minutes of the board, and in violation of the contracts between the State Highway Department (now Department of Transportation) and the county was sufficient as against a general demurrer

(now motion to dismiss) to show that the plaintiffs were entitled to some of the substantial relief prayed for. *Ferguson v. Randolph County*, 211 Ga. 103, 84 S.E.2d

70 (1954) (decided under former Ga. L. 1937, p. 912).

Cited in *Faulk v. Twiggs County*, 269 Ga. 809, 504 S.E.2d 668 (1998).

32-4-62. Contracts with state, state agencies, adjoining counties, and incorporated municipalities of county.

(a) Subject to the limitations of this Code section, in addition to the authority to contract with a private contractor, a county may enter into a contract with the state, a state agency, another county or municipality, or with any combination or number of the foregoing entities for work on any public road system of Georgia.

(b) Such a contract with a state agency is subject to the limitations of Code Section 32-2-61, including the cost of the negotiated contract, and the right of the department to supervise performance of the contract.

(c) A county shall have authority to enter into a contract with adjoining counties for the joint work on a road constituting a part of the county road system of those counties which are parties to such contract.

(d) A county shall have the authority provided in subsection (b) of Code Section 32-4-112 to contract with a municipality and expend funds for work on public roads within a municipality in the county. (Code 1933, § 95A-818, enacted by Ga. L. 1973, p. 947, § 1.)

Cross references. — Provision that county treasurer or other county official shall not receive commission on funds received or disbursed in connection with

county contracts with Department of Transportation for construction or repair of roads, § 36-6-13.

OPINIONS OF THE ATTORNEY GENERAL

Contract for improvement of county road located in municipality.

— County may, by contract, obtain the cooperation of a municipality in the right-of-way acquisition for, and construc-

tion and maintenance of, a county road located within the municipality, but the county cannot require this of a municipality absent an appropriate contract. 1986 Op. Att’y Gen. No. U86-27.

32-4-63. Limitations on power to contract.

A county is prohibited from negotiating a contract except a contract:

(1) Involving the expenditure of less than \$20,000.00;

(2) With a state agency or county or municipality with which a county is authorized to contract in accordance with the provisions of Code Sections 32-4-61 and 32-4-62;

(3) For the purchase of those materials, supplies, and equipment necessary for the county’s construction and maintenance of its public

roads and for the support and maintenance of the county's forces used in such work, as authorized by Chapter 91 of Title 36;

(4) Subject to Article 6 of Chapter 6 of this title, with a railroad or railway company or a publicly or privately owned utility concerning relocation of its line, tracks, or facilities where the same are not then located in a public road and such relocation or grade-crossing elimination is necessary as an incident to the construction of a new public road or to the reconstruction or maintenance of an existing public road. Nothing contained in this paragraph shall be construed as requiring a county to furnish a site or right of way for railroad or railway lines or tracks of public utility facilities required to be removed from a public road;

(5) For engineering or other kinds of professional or specialized services;

(6) For emergency maintenance requiring immediate repairs to a public road, including but not limited to bridge repairs, snow and ice removal, and repairs due to flood conditions; or

(7) Otherwise expressly authorized by law. (Code 1933, § 95A-819, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1989, p. 356, § 2; Ga. L. 2000, p. 498, § 9.)

Law reviews. — For annual survey of local government law, see 56 Mercer L. Rev. 351 (2004).

JUDICIAL DECISIONS

Specialized services. — Summary judgment pursuant to O.C.G.A. § 9-11-56 was properly granted in the county's action to recover money had and received by the contractor, since the contractor asserted that the contract, which was for road striping and which was not opened for public bidding, was for a specialized service under O.C.G.A. § 32-4-63(5), an exception to the public bidding requirements under O.C.G.A. § 32-4-64; however, O.C.G.A. § 32-1-3(6) expressly defined road striping as a form of road construction and not as a special service. *Howard v. Brantley County*, 260 Ga. App. 330, 579 S.E.2d 758 (2003).

No power to enter contract. — County was properly granted summary

judgment pursuant to O.C.G.A. § 9-11-56 in the county's action to recover money received by the contractor for applying stripes to the county's roads, where the county commissioner awarded the contract without public bidding, the contract was oral, and the contract was for over \$190,000; a belated objection under O.C.G.A. § 36-10-1 did not prevent the county from recovering the funds because the contract was beyond the county's authority to enter as O.C.G.A. § 32-4-63(1) barred counties from negotiating contracts in excess of \$20,000, and the contract was not exempt from competitive bidding under § 32-4-63(5). *Howard v. Brantley County*, 260 Ga. App. 330, 579 S.E.2d 758 (2003).

RESEARCH REFERENCES

ALR. — Contract for personal services bids as condition of public contract, 15 as within requirement of submission of ALR3d 733.

32-4-64. Required letting of contracts by public bid.

Except as authorized by Code Section 32-4-63, all contracts shall be let by public bid. (Code 1933, § 95A-820, enacted by Ga. L. 1973, p. 947, § 1.)

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Ga. L. 1937, p. 912, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section.

Public bidding was required. — Summary judgment pursuant to O.C.G.A. § 9-11-56 was properly granted in the county's action to recover money had and received by the contractor, after the contractor asserted that the contract, which was for road striping and which was not opened for public bidding, was for a specialized service under O.C.G.A. § 32-4-63(5), an exception to the public bidding requirements under O.C.G.A. § 32-4-64; however, O.C.G.A. § 32-1-3(6) expressly defined road striping as a form

of road construction and not as a special service. *Howard v. Brantley County*, 260 Ga. App. 330, 579 S.E.2d 758 (2003).

Petition sufficient against motion to dismiss. — Petition alleging that the county commissioners had entered into contracts with one of the commissioner's members for the construction of roads in the county without the contracts being in writing and entered on the minutes of the board, and in violation of the contracts between the State Highway Department (now Department of Transportation) and the county, was sufficient as against a general demurrer (now motion to dismiss) to show that the plaintiffs were entitled to some of the substantial relief prayed for. *Ferguson v. Randolph County*, 211 Ga. 103, 84 S.E.2d 70 (1954) (decided under former Ga. L. 1937, p. 912).

RESEARCH REFERENCES

ALR. — Contract for personal services bids as condition of public contract, 15 as within requirement of submission of ALR3d 733.

32-4-65. Advertising for bids.

(a) Notwithstanding any provision of Chapter 91 of Title 36 and of any other provision of law to the contrary, on all contracts to be let by public bid a county shall advertise for competitive sealed bids for at least two weeks. The public advertisement shall be inserted once a week for two weeks in such newspaper wherein the county sheriff's sales are advertised or in such other newspapers or publications, or both, as will ensure adequate publicity, the first insertion to be two weeks prior to the opening of the sealed bids, the second to follow one week after the publication of the first insertion.

(b) Such advertisement shall include but not be limited to the following:

- (1) A description sufficient to enable the public to know the approximate extent and character of the work to be done;
- (2) The time allowed for performance;
- (3) The terms and time of payment;
- (4) Where and under what conditions and costs the detailed plans and specifications and proposal forms may be obtained;
- (5) The amount of the proposal guaranty, if one is required;
- (6) The time and place for submission and opening of bids;
- (7) The right of the county to reject any one or all bids; and
- (8) Such further notice as the county may deem advisable as in the public interest. (Code 1933, § 95A-821, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 2000, p. 498, § 10.)

JUDICIAL DECISIONS

Cited in *Faulk v. Twiggs County*, 269 Ga. 809, 504 S.E.2d 668 (1998).

RESEARCH REFERENCES

ALR. — Right of public authorities to reject all bids for public work or contract, 52 ALR4th 186.

32-4-66. Payment by bidder to cover costs.

A county may require each bidder to pay a reasonable sum sufficient to cover the cost to the county, where applicable, of the bid proposal form, the contract, and its specifications. (Code 1933, § 95A-822, enacted by Ga. L. 1973, p. 947, § 1.)

32-4-67. Proposal guaranty by bidder.

(a) No bid, other than a bid solely for engineering or other kinds of professional services, will be considered by a county unless it is accompanied by a proposal guaranty in the form of a certified check or other acceptable security payable to the county for an amount deemed by the county in the public interest necessary to ensure that the successful bidder will execute the contract on which he bid.

(b) A proposal guaranty will be returned to a bidder upon receipt by the county of the bidder's written withdrawal of his bid if such receipt

is before the time scheduled for the opening of bids. Upon the determination by a county of the lowest reliable bidder, the county will return the proposal guaranties to all bidders except that of the lowest reliable bidder. If no contract award is made within 30 days after the date set for the opening of bids, all bids shall be rejected and all proposal guaranties shall be returned unless the county and the successful bidder agree in writing to a longer period of time. (Code 1933, § 95A-823, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 2007, p. 167, § 3/HB 192.)

32-4-68. Award of contract to lowest reliable bidder; procedure upon rejection of bids.

Where a contract has been let for bid, the county, by resolution entered in its minutes, shall award the contract to the lowest reliable bidder, provided that the county shall have the right to reject any and all such bids whether such right is reserved in the public notice or not and, in such case, may readvertise, perform the work itself, or abandon the project. (Ga. L. 1922, p. 37, § 1c; Code 1933, § 95-1105; Code 1933, § 95A-824, enacted by Ga. L. 1973, p. 947, § 1.)

JUDICIAL DECISIONS

Cited in *Faulk v. Twiggs County*, 269 Ga. 809, 504 S.E.2d 668 (1998).

RESEARCH REFERENCES

ALR. — Right of public authorities to reject all bids for public work or contract, 52 ALR4th 186.

Public contracts: low bidder's monetary relief against state or local agency for nonaward of contract, 65 ALR4th 93.

32-4-69. Bonds of successful bidder generally.

Notwithstanding any provision of Chapter 91 of Title 36 to the contrary, when the price of a contract let to bid, other than a contract solely for engineering or other kinds of professional services, is \$5,000.00 or more, no contract of a county shall be valid unless the contractor first gives:

(1) A performance bond that meets the requirements established in Parts 1 and 3 of Article 3 of Chapter 91 of Title 36 in the amount of the bid, with one good and solvent surety, for the faithful performance of the contract and to indemnify the county for any damages occasioned by a failure to perform the same within the prescribed time;

(2) A payment bond that meets the requirements established in Parts 1 and 4 of Article 3 of Chapter 91 of Title 36; and

(3) Such other bonds required by the county in its advertisement for bids, including but not limited to public liability and property damage insurance bonds. (Ga. L. 1922, p. 37, § 1b; Code 1933, § 95-1104; Code 1933, § 95A-825, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 2000, p. 498, § 11; Ga. L. 2001, p. 820, § 4; Ga. L. 2007, p. 167, § 4/HB 192.)

OPINIONS OF THE ATTORNEY GENERAL

Contract amount. — Performance bonds are required on all county contracts in the amount of \$5,000.00 or more for the construction, reconstruction, or maintenance of public roads. Payment bonds are

required on these type of contracts if the contract amount is in excess of \$20,000.00. 1988 Op. Att'y Gen. No. U88-32.

32-4-70. Bridge repair bonds.

(a) As used in this Code section, the term "bridge" shall include the approaches to such bridge within 50 feet of either end except when the bridge itself measures 100 feet or more, in which case the term "bridge" shall include the approaches within 100 feet of either end of the bridge.

(b) Where the contract relates to the construction or reconstruction of all or a part of a bridge, the county or counties affected may require the successful contractor to add to the conditions of the performance bond required under paragraph (1) of Code Section 32-4-69 the following condition: to keep the bridge in good condition for a period of not less than seven years. (Laws 1888, Cobb's 1851 Digest, p. 39; Code 1863, § 649; Code 1868, § 711; Code 1873, § 671; Code 1882, § 671; Civil Code 1895, § 603; Civil Code 1910, § 748; Code 1933, § 95-1001; Code 1933, § 95A-826, enacted by Ga. L. 1973, p. 947, § 1.)

Cross references. — Authority of counties to erect bridges across navigable streams, T. 36, C. 14.

JUDICIAL DECISIONS

Bridge includes fill or embankment in road of approach. — Fill or an embankment in a road which constitutes the approach to a bridge and which is necessary to make access to the bridge is a part

of the bridge. *Havird v. Richmond County*, 47 Ga. App. 580, 171 S.E. 220 (1933).

Cited in *Sikes v. Candler County*, 247 Ga. 115, 274 S.E.2d 464 (1981).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, § 102-103, which was subsequently repealed but was

succeeded by provisions in this Code section, are included in the annotations for this Code section.

Bridges assumed to be part of con-

nected roads, streets, and highways.

— Bridges may be a part of city streets, county roads, or the state-aid highway system; in each case, the street or road is defined as including bridges, unless a dif-

ferent meaning is apparent from the context. 1972 Op. Att’y Gen. No. 72-64 (decided under former Code 1933, § 102-103).

32-4-71. Failure to take bonds; liability of county.

(a) If the payment bond required by paragraph (2) of Code Section 32-4-69 is not taken, the county shall be liable to subcontractors, laborers, materialmen, and other persons, as provided in Part 4 of Article 3 of Chapter 91 of Title 36, for losses to them resulting from failure to take such bond.

(b) If the condition of bridge repair authorized by Code Section 32-4-70 to be added to the performance bond is not taken, the contracting county or counties shall be primarily liable for all injuries caused by reason of any defective bridge for damages occurring within seven years of the contractor’s work on the bridge and its acceptance by the county or counties, provided that the county shall be discharged from all liability upon the inclusion in the performance bond of the aforesaid bridge repair condition.

(c) Nothing in this Code section shall be construed so as to impose personal liability on the county governing authority. (Laws 1888, Cobb’s 1851 Digest, p. 39; Code 1863, § 669; Code 1868, § 731; Code 1873, § 691; Code 1882, § 691; Civil Code 1895, § 603; Civil Code 1910, § 748; Code 1933, § 95-1001; Code 1933, § 95A-827, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 2000, p. 498, § 12; Ga. L. 2001, p. 820, § 5.)

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION
DEFINITION OF BRIDGE
DEFINITION OF DEFECTS
LIABILITY

General Consideration

Editor’s notes. — In light of the similarity of the statutory provisions, decisions under former Civil Code 1895, §§ 623, 748; former Civil Code 1910, §§ 757, 768; and former Code 1933, §§ 23-1901 through 23-1905, 95-1001, 95-1210, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section.

Cited in *Sikes v. Candler County*, 247 Ga. 115, 274 S.E.2d 464 (1981).

Definition of Bridge

Definition of bridge. — Word “bridge” in this section, which gives a right of action against a county for defective construction, means a bridge used as an instrumentality for travel along a highway and for crossing streams or ravines. *Hubbard v. Fulton County*, 144 Ga. 363, 87 S.E. 281 (1915); *Ellis v. Floyd County*, 24 Ga. App. 717, 102 S.E. 181 (1920); *Berrien County v. Vickers*, 73 Ga. App. 863, 38 S.E.2d 619 (1946) (see O.C.G.A. § 32-4-71).

Definition of Bridge (Cont'd)

Bridge includes necessary approaches. — Term "bridge" includes all the appurtenances necessary to the bridge's proper use, and embraces the bridge's abutments and approaches; that which is necessary as an approach, to connect the bridge with the highway, is an essential part of the bridge itself. *Howington v. Madison County*, 126 Ga. 699, 55 S.E. 941 (1906); *Berrien County v. Vickers*, 73 Ga. App. 863, 38 S.E.2d 619 (1946).

Fill or embankment in road of approach to a bridge and which is necessary to make access to the bridge is a part of the bridge. *Havird v. Richmond County*, 47 Ga. App. 580, 171 S.E. 220 (1933).

Contiguous embankments necessary for access, which county must repair. — Contiguous embankment necessary to make access to a bridge, so as to pass teams and wagons over the bridge, is a part of the bridge, and title to the bridge covers such an embankment; but if the embankment is not a necessary part of the bridge, but a part of the streets of the municipality, the town, and not the county, would be bound to keep the bridge in repair. *Havird v. Richmond County*, 176 Ga. 722, 168 S.E. 897, answer conformed to, 47 Ga. App. 580, 171 S.E. 220 (1933).

Road leading to bridge. — While the word "bridge" does not include the public road leading thereto, or a drain or opening thereunder, it does include all the appurtenances necessary to the bridge's proper use, and embraces the bridge's abutments and approaches and that which is necessary as an approach to connect the bridge with the highway is an essential part of the bridge itself. *Warren County v. Battle*, 48 Ga. App. 240, 172 S.E. 673 (1934).

Culverts. — Culvert and a bridge are not the same, even though the culvert and bridge may serve the same purpose. *Hubbard v. Fulton County*, 144 Ga. 363, 87 S.E. 281 (1915); *Ellis v. Floyd County*, 24 Ga. App. 717, 102 S.E. 181 (1920); *Floyd County v. Stewart*, 97 Ga. App. 67, 101 S.E.2d 879 (1958).

Piping and water boxes. — Piping and water boxes for drainage purposes across the public roads are not "bridges"

within the meaning of the law. *Montgomery County v. Seaboard Air Line Ry.*, 41 Ga. App. 130, 152 S.E. 261 (1930).

Definition of Defects

Definition of defects in bridge. — Defect in a bridge, which serves as the basis for liability by a county for injuries received by reason thereof, includes any condition of the bridge which renders the bridge unsafe for travelers passing over the bridge. *Havird v. Richmond County*, 47 Ga. App. 580, 171 S.E. 220 (1933).

Includes approaches left during repairs. — When in action against a county for damages from the falling of a truck through an opening where a public bridge had been, into a ravine below, the petition was not demurrable (now motion to dismiss), and the verdict for the plaintiff was not contrary to law or without evidence to support the verdict since the petition and the evidence showed that at the time of the injury at least a part of the bridge, i.e., the sills constituting a portion of its "approaches," still remained, and the rest of the bridge was being repaired. *Warren County v. Battle*, 48 Ga. App. 240, 172 S.E. 673 (1934).

Road machinery left on approaches. — When the county, or State Highway Department (now Department of Transportation) negligently leaves road machinery on the abutment or approach to a bridge which causes injuries to a person undertaking to cross the bridge in an automobile, such dangerous condition in the bridge is a defect in the bridge, which makes a county liable for injuries caused by a defective bridge. *Berrien County v. Vickers*, 73 Ga. App. 863, 38 S.E.2d 619 (1946).

Liability

County liability. — County is primarily liable for injuries caused by defective bridges, whether erected by contractors or county authorities. *Berrien County v. Vickers*, 73 Ga. App. 863, 38 S.E.2d 619 (1946).

County authorities are bound to exercise ordinary care; county authorities are not insurers of the safety of county bridges. *Warren County v. Evans*, 118 Ga.

200, 44 S.E. 986 (1903) (decided under former Civil Code 1895, § 623).

County liability for failure to take contractor's bond. — For a county to be liable for injuries resulting from defective bridge repairs there must have been a failure to take a bond from a contractor when such a bond was required, and the injury complained of must have occurred within the time which would have been covered by the contractor's bond, if such a bond had been given. *Wolf v. Upson County*, 44 F.2d 925 (5th Cir. 1930) (decided under former Civil Code 1910, §§ 757, 768).

Bridges adjoining county lines. — Since a public bridge was constructed under contract with the authorities of one county across a stream dividing that county from another (the authorities of the latter refusing to participate therein), it was the duty of the county authorities causing the construction of such bridge to take bond in accordance with this section. *Cook v. County of DeKalb*, 95 Ga. 218, 22 S.E. 151 (1894). See also *Laurens County v. McLendon*, 19 Ga. App. 246, 91 S.E. 283 (1917); *Wells v. Jefferson County*, 19 Ga. App. 455, 91 S.E. 943 (1917) (decided under former Code 1882, § 691 and former Civil Code 1910, § 768).

Either county or contractor may be sued. — Action may be brought either against the contractor or against the county; it is not necessary that the plaintiff should sue the contractor to insolvency before suing the county. *Arnold, Estes & Co. v. Henry County*, 81 Ga. 730, 8 S.E. 606 (1889) (decided under former Code 1882, § 691).

County not liable after seven years. — Liability of the contractor is to keep the

bridge in good repair for seven years, whether a bond is given for that purpose or not and the liability of the county does not extend beyond that. *Monroe County v. Flint*, 80 Ga. 489, 6 S.E. 173 (1888).

Built without bond. — After a county let out the contract for building a bridge to the lowest bidder, but took no bond from the contractor, and the injury complained of occurred ten years after the time of building the bridge, there was no legal liability on the part of the county because of such injury. *Monroe County v. Flint*, 80 Ga. 489, 6 S.E. 173 (1888).

Bond limited to three years. — When the bond and security required and taken limited the period to three years, this may be treated as a "sufficient guarantee" so as to exempt the county from liability for damages sustained within such period of three years. *Mappin v. County of Washington*, 92 Ga. 130, 17 S.E. 1009 (1893).

No county liability when bridge rebuilt without contract. — Liability for defects in a county-line bridge attaches only for failure of the county to take a sufficient bond from the contractor. Thus, since the petition showed that such a bridge was rebuilt by the county without a contract, and without taking a bond, no liability for injuries caused by defects in such a bridge attached against the county. *Jones v. Appling County*, 90 Ga. App. 386, 83 S.E.2d 53 (1954) (decided under former Code 1933, §§ 23-1901 through 23-1905, 95-1001, 95-1210).

When county itself undertakes bridge work, O.C.G.A. § 32-4-71 is inapplicable and provides for no county liability for defective bridges. *Kordares v. Gwinnett County*, 220 Ga. App. 848, 470 S.E.2d 479 (1996).

RESEARCH REFERENCES

ALR. — Measure and elements of damages for injury to bridge, 31 ALR5th 171.

32-4-72. Failure of successful bidder to sign contract or furnish bonds.

If the successful bidder fails to sign the contract or furnish the bonds required under authority of Code Section 32-4-71, his proposal guaranty, if one had been required by the county, will become the property

of the county as liquidated damages. The contract then may be readvertised, performed with county forces, or the project abandoned. (Code 1933, § 95A-828, enacted by Ga. L. 1973, p. 947, § 1.)

32-4-73. Oath by successful bidder.

A successful bidder, before commencing the work, shall execute a written oath, as required by subsection (e) of Code Section 36-91-21, stating that he or she has not violated such Code section, which makes it unlawful to restrict competitive bidding. (Code 1933, § 95A-829, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 2000, p. 498, § 13; Ga. L. 2001, p. 820, § 6.)

32-4-74. Applicability of other laws to this part.

Except as indicated to the contrary in this part, Chapter 91 of Title 36 shall not apply to this part. (Code 1933, § 95A-830, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 2000, p. 498, § 14; Ga. L. 2001, p. 4, § 32; Ga. L. 2001, p. 820, § 7.)

Code Commission notes. — The amendment of this Code section by Ga. L. 2001, p. 4, § 32, irreconcilably conflicted with and was treated as superseded by Ga. L. 2001, p. 820, § 7. See *County of Butts v. Strahan*, 151 Ga. 417 (1921).

ARTICLE 4

MUNICIPAL STREET SYSTEMS

PART 1

GENERAL POWERS AND DUTIES OF MUNICIPALITY

32-4-90. Acquisition of rights of way.

Acquisition of rights of way for public roads on the state highway system located within the corporate limits of a municipality shall be made in compliance with subsection (e) of Code Section 32-3-3 and Code Section 32-5-25. (Code 1933, § 95A-501, enacted by Ga. L. 1973, p. 947, § 1.)

RESEARCH REFERENCES

ALR. — Constitutionality of statutory provisions as to political corporations or divisions which shall bear cost of establishing or maintaining highways, 2 ALR 746; 123 ALR 1462.

32-4-91. Construction and maintenance of systems; acquisition of labor; maximum bridge weight; notification of department about new streets and abandoned streets.

(a) A municipality shall plan, designate, improve, manage, control, construct, and maintain an adequate municipal street system and shall have control of and responsibility for all construction, maintenance, or other work related to the municipal street system. Such work may be accomplished through the use of municipal forces, including inmate labor, by contract as authorized in paragraph (1) of subsection (a) of Code Section 32-4-92, or otherwise as permitted by law.

(a.1) A municipality shall post on each bridge on the municipal street system and on each approach thereto on the municipal street a sign containing a legible notice showing the maximum safe weight limit for such bridge, each such sign to conform to the department regulations promulgated under authority of Code Section 32-6-50.

(b) A municipality shall notify the department within three months after a municipal street is added to the municipal street system and shall further notify the department within three months after a municipal street is abandoned. This notification shall be accompanied by an appropriate digital file, map, or plat depicting the location of the new or abandoned street. (Code 1933, § 95A-502, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1981, p. 953, § 2; Ga. L. 1996, p. 6, § 32; Ga. L. 1998, p. 1206, § 2; Ga. L. 2011, p. 583, § 7/HB 137.)

The 2011 amendment, effective July 1, 2011, substituted “an appropriate digital file, map, or plat” for “a map or plat” in the last sentence of subsection (b).

Cross references. — Weight of vehicle and load, § 32-6-26. Promulgation of rules and regulations governing hiring out of inmates, § 42-5-60.

JUDICIAL DECISIONS

Editor’s notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, Ch. 95-15; and former Ga. L. 1953, Nov.-Dec. Sess., p. 556 (see O.C.G.A. § 40-6-20), which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section.

Municipal regulation and control of state highway use. — This section does not give municipalities power to regulate and control use of state highways. Mayor of Woodbury v. State Hwy. Dep’t, 225 Ga. 723, 171 S.E.2d 272 (1969) (decided under former Ga. L. 1953, Nov.-Dec. Sess., p. 556 (see O.C.G.A. §§ 32-4-91 and 40-6-20)).

Construction of state highway through municipality. — State Highway Department (now Department of Transportation) may construct public highway through municipality without the municipality’s consent. City of Carrollton v. Walker, 215 Ga. 505, 111 S.E.2d 79 (1959) (decided under former Code 1933, Ch. 95-15).

State Highway Department’s control of traffic signals on state highways. — State Highway Department (now Department of Transportation), instead of the municipalities of the state, has the power to place and operate traffic control devices on state highways within the limits of the municipalities. Mayor of

Woodbury v. State Hwy. Dep't, 225 Ga. 723, 171 S.E.2d 272 (1969) (decided under former Ga. L. 1953, Nov.-Dec. Sess., p. 556).

OPINIONS OF THE ATTORNEY GENERAL

County must maintain roads in county road system. — Because the county must maintain roads on the county road system and because public roads are not removed from the system by mere annexation into a municipality where the road lies, the county must continue to maintain roads on the county road system which are in areas annexed into a municipality until the governing authority of the county removes the roads from the county road system. 1976 Op. Att'y Gen. No. U76-21.

Truck routes. — By establishing truck routes, a city may effectively regulate the amount of weight which may be carried on designated streets on a municipal street system. 1982 Op. Att'y Gen. No. 82-20.

Any city or county ordinances purporting to regulate vehicular weights must not exceed maximum weights permitted by O.C.G.A. § 32-6-26. 1982 Op. Att'y Gen. No. 82-20.

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Highways, Streets, and Bridges, § 86.

ALR. — Liability of municipal corporations and their licensees for the torts of independent contractors, 52 ALR 1012.

Municipal power as to billboards and outdoor advertising, 58 ALR2d 1314.

Relative rights and liabilities of abutting owners and public authorities in parkways in center of street, 81 ALR2d 1436.

Power of eminent domain as between state and subdivision or agency thereof, or as between different subdivisions or agencies themselves, 35 ALR3d 1293.

Liability, in motor vehicle-related cases, of governmental entity for injury or death resulting from ice or snow on surface of highway or street, 97 ALR3d 11.

32-4-92. Powers.

(a) The powers of a municipality with respect to its municipal street system, unless otherwise expressly limited by law, shall include but not be limited to the following:

(1) Subject to the limitations of subparagraph (d)(1)(A) of Code Section 32-2-61, a municipality has the authority to contract with any person, the federal government or its agencies, the state or its agencies, other municipalities, a county in which the municipality lies, or any combination of the foregoing entities for the construction, reconstruction, or maintenance of any public road located within the municipality;

(2) A municipality may accept and use federal and state funds for municipal street purposes and do all things necessary, proper, or expedient to achieve compliance with the provisions and requirements of all applicable federal-aid acts and programs. Nothing in this title is intended to conflict with any such federal-aid law and, in case

of such conflict, such portion as may be in conflict with such federal law is declared of no effect to the extent of the conflict;

(3) A municipality may acquire, manage, and dispose of real property or any interests therein for public roads on its municipal street system under the procedures provided in Article 1 of Chapter 3 of this title and in Chapter 7 of this title. In acquiring property for rights of way for federal-aid highway projects on its system, the municipality shall comply with the requirements of the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970, as amended by the Uniform Relocation Act Amendments of 1987, Title IV of Public Law 100-17, and in general be guided by the policies applicable to the department as set forth in Code Section 32-8-1. For good cause shown, a municipality, at any time after commencement of condemnation proceedings and prior to final judgment therein, may dismiss its condemnation action, provided that (A) the condemnation proceedings have not been instituted under Article 1 of Chapter 3 of this title and (B) the condemnor has first paid to the condemnee all expenses and damages accrued to the condemnee up to the date of the filing of the motion for dismissal of the condemnation action;

(4) Subject to the requirements of Part 2 of this article, a municipality may purchase, borrow, rent, lease, control, manage, receive, and make payment for all personal property such as equipment, machinery, vehicles, supplies, material, and furniture which may be needed in the operation of the municipal street system and may sell or otherwise dispose of all personal property owned by the municipality and used in the operation of said municipal street system which is no longer necessary or useful in connection with the operation of said system; and it may execute such instruments as may be necessary in connection with the exercise of the foregoing powers in this paragraph;

(5) A municipality and its authorized agents and employees shall have the authority to enter upon any lands in the municipality for the purpose of making such surveys, soundings, drillings, and examinations as the municipality may deem necessary or desirable to accomplish the purposes of this title; and such entry shall not be deemed a trespass, nor shall it be deemed an entry which would constitute a taking in a condemnation proceeding. However, reasonable notice shall be given the owner or occupant of the property to be entered; such entry shall be done in a reasonable manner with as little inconvenience as possible to the owner or occupant of the property; and the municipality shall make reimbursement for any actual damages resulting from such entry;

(6) A municipality may employ, discharge, promote, set and pay the salaries and compensation of its personnel, and determine the

duties, qualifications, and working conditions for all persons whose services are needed in the construction, maintenance, administration, operation, and development of its municipal street system; and may employ or contract as independent contractors with such engineers, surveyors, attorneys, consultants, and all other employees whose services may be required, subject to the limitations of existing law;

(7) Except as otherwise provided by Code Section 12-6-24, a municipality may regulate and control the use of the public roads on its municipal street system and on portions of the county road systems extending within the corporate limits of the municipality. Any municipality may regulate the parking of vehicles on any such roads in order to facilitate the flow of traffic and to this end may require and place parking meters on or immediately adjacent to any or all of such roads for the purpose of authorizing timed parking in designated spaces upon the payment of a charge for such privilege. A municipality also may place such parking meters on or adjacent to any public road on the state highway system located within the corporate limits of the municipality when authorized by the department pursuant to Code Section 32-6-2;

(8) A municipality may purchase supplies for municipal street system purposes through the state, as authorized by Code Sections 50-5-100 through 50-5-102;

(9) A municipality may provide lighting and maintenance thereof on any public road located within its limits;

(10) A municipality may grant permits and establish reasonable regulations for the installation, construction, maintenance, renewal, removal, and relocation of pipes, mains, conduits, cables, wires, poles, towers, traffic and other signals, and other equipment, facilities, or appliances of any utility in, on, along, over, or under any part of its municipal street system and of a county road system lying within its municipal limits. However, such regulations shall not be more restrictive with respect to utilities affected thereby than are equivalent regulations promulgated by the department with respect to utilities on the state highway system under authority of Code Section 32-6-174. As a condition precedent to the granting of such permits, the municipality may require application in writing specifically describing the nature, extent, and location of the portion of the utility affected. The municipality may also require the applicant to furnish an indemnity bond or other acceptable security conditioned to pay for any damage to any part of a public road or to any member of the public caused by the work of the utility performed under authority of such permit. However, it shall be the duty of the municipality to ensure that the normal operation of the utility does not interfere with

the use of any portion of the municipal street system or of a municipal extension of a county public road. The municipality may also order the removal and relocation of the utility, equipment, facilities, or appliances where such removal and relocation is made necessary by the construction and maintenance of any part of the municipal street system or municipal extension of a county public road. In so ordering the removal and relocation of a utility or in performing such work itself, the municipality shall conform to the procedure set forth for the department in Code Sections 32-6-171 and 32-6-173, except that when the removal and relocation have been performed by the municipality, it shall certify the expenses thereof for collection to its city attorney; and

(11) A municipality may provide for surveys, maps, specifications, and other things necessary in supervising, locating, abandoning, relocating, improving, constructing, or maintaining the municipal street system, or any part thereof, or any activities incident thereto or necessary in doing such other work on public roads as the municipality may be given responsibility for or control of by law.

(b) In addition to the powers specifically delegated to it in this title, a municipality shall have the authority to perform all acts which are necessary, proper, or incidental to the efficient operation and development of the municipal street system; and this title shall be liberally construed to that end. Any such power vested by law in a municipality, but not implemented by specific provisions for the exercise thereof, may be executed and carried out by a municipality in a reasonable manner pursuant to such rules, regulations, and procedures as a municipality may adopt and subject to such limitations as may be provided by law. (Code 1933, §§ 95A-503, 95A-504, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1980, p. 775, § 6; Ga. L. 1988, p. 1737, § 2; Ga. L. 2002, p. 1126, § 3.)

Cross references. — Assessments by municipalities for street improvements, T. 36, C. 39. Use of parking meter receipts to pay principal, interest, and other expenses of revenue bonds issued to finance public parking areas or public parking buildings, § 36-82-62.

U.S. Code. — The Uniform Relocation

System and Real Property Acquisition Policy Act of 1970, referred to in this Code section, is codified as 42 U.S.C. Ch. 61.

Law reviews. — For annual survey of administrative law, see 56 Mercer L. Rev. 31 (2004). For annual survey of local government law, see 57 Mercer L. Rev. 289 (2005).

JUDICIAL DECISIONS

Police power of municipalities. — State law has not preempted police power authority of municipalities to regulate location and maintenance of outdoor advertising signs within their territorial jurisdictions. *City of Doraville v. Turner*

Communications Corp., 236 Ga. 385, 223 S.E.2d 798 (1976).

City's ordinances prohibiting the use of amphibious vehicles as tour vehicles in parts of the city were not preempted by the state law giving the

Public Service Commission the authority to issue certificates of public convenience and necessity; the ordinances fall within the constitutional exception to the doctrine of preemption since the General Assembly enacted general laws authorizing the local government to exercise its police powers and enact the local laws at issue. *Old S. Duck Tours, Inc. v. Mayor of Savannah*, 272 Ga. 869, 535 S.E.2d 751 (2000).

No municipal liability for lighting. — City's failure to add supplemental lighting to crossing was not actionable for negligence as O.C.G.A. § 32-4-92 provides that a municipality "may" provide lighting on any public road located within the municipality's limits, but is under no duty to provide lighting if the municipality does not choose to do so. *Biggers ex rel. Key v. Southern Ry.*, 820 F. Supp. 1409 (N.D. Ga. 1993). but see *CSX Transp., Inc. v. Trism Specialized Carriers, Inc.*, 9 F. Supp. 2d 1374 (N.D. Ga. 1998), *aff'd*, 182 F.3d 788 (11th Cir. 1999).

Court's authority to review. — Federal appellate court determined that whether an amendment to Macon, Ga., Code of Ordinances art. VII, § 18-153 that increased the annual permit fee that the City of Macon charged a telecommunications company for placement of the company's fiber optic cable on utility poles from \$2.00 to \$4.50 per linear foot was preempted by O.C.G.A. § 32-4-92(a)(10), or otherwise invalid because it exceeded the fees charged by the Georgia Department of Transportation for its rights of way, was an issue appropriate for resolution by the Supreme Court of Georgia through a certified question. *Alltel Commun., Inc. v. City of Macon*, 345 F.3d 1219 (11th Cir. 2003).

Cited in *Department of Transp. v. Doss*, 238 Ga. 480, 233 S.E.2d 144 (1977); *Georgia Power Co. v. Collum*, 176 Ga. App. 61, 334 S.E.2d 922 (1985); *Murray v. Ga. DOT*, 284 Ga. App. 263, 644 S.E.2d 290 (2007).

OPINIONS OF THE ATTORNEY GENERAL

Scope of municipal regulation of state highway system. — Municipality may not, by ordinance, seek to regulate streets which are a part of the state highway system, except when the municipality is placing parking meters on or adjacent to a road which is a part of the system, and has been first authorized by the department to place such parking meters; or the municipality may also erect or maintain a traffic-control device on a road which is a part of the system, if written approval has first been obtained from the department. 1974 Op. Att'y Gen. No. U74-94.

Contract for improvement of county road located in municipality. — County may, by contract, obtain the cooperation of a municipality in the right-of-way acquisition for, and construction and maintenance of, a county road

located within the municipality, but the county cannot require this of a municipality absent an appropriate contract. 1986 Op. Att'y Gen. No. U86-27.

Truck routes. — By establishing truck routes, a city may effectively regulate the amount of weight which may be carried on designated streets on the municipal street system. 1982 Op. Att'y Gen. No. 82-20.

Any city or county ordinances purporting to regulate vehicular weights must not exceed maximum weights permitted by O.C.G.A. § 32-6-26. 1982 Op. Att'y Gen. No. 82-20.

Use of cameras to enforce traffic laws. — Municipalities are not prohibited by Georgia's Constitution or laws from enacting ordinances regarding enforcement of traffic control devices by the use of cameras. 2000 Op. Att'y Gen. No. U2000-7.

RESEARCH REFERENCES

C.J.S. — 40 C.J.S., Highways, § 187 et seq.

ALR. — Validity of restrictions as to

points at which jitney bus passengers may be taken on and discharged, 6 ALR 110.

Validity of statute or ordinance giving

right of way in streets or highways to certain classes of vehicles, 38 ALR 24.

Constitutionality of statute or ordinance denying right of property owners to defeat a proposed street improvement by protest, 52 ALR 883.

Liability of municipal corporations and their licensees for the torts of independent contractors, 52 ALR 1012.

Duty as regards barriers for protection of automobile travel, 86 ALR 1389; 173 ALR 626.

Personal liability of highway officers for damage to or trespass upon land in connection with construction or maintenance of highway, 90 ALR 1481.

Validity, construction, and application of municipal ordinances relating to loading or unloading passengers by interurban busses on streets, 144 ALR 1119.

Municipal power as to billboards and outdoor advertising, 58 ALR2d 1314.

Municipality's power to permit private owner to construct building or structure overhanging or crossing the air space above public street or sidewalk, 76 ALR2d 896.

Liability of private landowner for vegetation obscuring view at highway or street intersection, 69 ALR4th 1092.

32-4-93. Liability of municipalities for defects in public roads.

(a) A municipality is relieved of any and all liability resulting from or occasioned by defects in the public roads of its municipal street system when it has not been negligent in constructing or maintaining the same or when it has no actual notice thereof or when such defect has not existed for a sufficient length of time for notice thereof to be inferred.

(b) A municipality is relieved of any and all liability resulting from or occasioned by defective construction of those portions of the state highway system or county road system lying within its corporate limits or resulting from the failure of the department or the county to maintain such roads as required by law unless the municipality constructed or agreed to perform the necessary maintenance of such road. (Civil Code 1895, § 749; Civil Code 1910, § 898; Code 1933, § 69-303; Ga. L. 1961, p. 469, § 4; Code 1933, § 95A-505, enacted by Ga. L. 1973, p. 947, § 1.)

Cross references. — Liability of municipal corporations for acts or omissions of officers, T. 36, C. 33.

Law reviews. — For article discussing necessity of liability insurance for Georgia counties and municipalities, and constitutional authority of the units to provide such insurance, see 25 Ga. B.J. 35 (1962). For article discussing Georgia's practice of exposing municipalities to tort liability through the use of nuisance law, see 12 Ga. St. B.J. 11 (1975). For article discussing origin and construction of Georgia statute concerning municipal liability for street defects, see 14 Ga. L. Rev. 239

(1980). For annual survey of local government law, see 38 Mercer L. Rev. 289 (1986). For annual survey article discussing local government law, see 51 Mercer L. Rev. 397 (1999). For survey article on local government law for the period from June 1, 2002 to May 31, 2003, see 55 Mercer L. Rev. 353 (2003). For annual survey of local government law, see 58 Mercer L. Rev. 267 (2006).

For note discussing state liability for highway defects and waiver of sovereign immunity under U.S. Const., amend. 11, see 27 Emory L.J. 337 (1978).

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION
TRIAL PROCEDURE**General Consideration**

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Ga. L. 1895, p. 306, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section.

Recreational Property Act. — Applying the Recreational Property Act (RPA), O.C.G.A. § 51-3-20 et seq., to a municipal sidewalk does not place the RPA in conflict with O.C.G.A. § 32-4-93, which sets forth circumstances in which a city may be liable for defects in its streets and sidewalks; simply stated, the RPA will control when the sidewalk is used for a "recreational purpose" and the other requirements of the RPA are satisfied, and § 32-4-93 will apply in other cases. *City of Tybee Island v. Godinho*, 270 Ga. 567, 511 S.E.2d 517 (1999).

Ordinance denying liability unconstitutional. — Insofar as charter provisions relieve a city from liability for negligence in the maintenance of the city's streets, such provision is inconsistent with general law in this state, and the inhibition contained in Ga. Const. 1945, Art. I, Sec. IV, Para. I (see Ga. Const. 1983, Art. III, Sec. VI, Para. IV) against the passage of special laws conflicting with existing general law precluded raising such charter provisions as a defense to a personal injury action against the city. *City of Macon v. Harrison*, 98 Ga. App. 769, 106 S.E.2d 833 (1958).

When legal duty exists in favor of third persons, city may by ordinance regulate the matter of the duty's performance. *Ellis v. Southern Grocery Stores, Inc.*, 46 Ga. App. 254, 167 S.E. 324 (1933).

Duty to maintain streets and sidewalks. — Municipal corporation has the duty to exercise ordinary care in keeping the municipality's streets and sidewalks in a reasonably safe condition so that a person can pass along the streets and

sidewalks in the ordinary methods of travel with reasonable safety. *City of East Point v. Christian*, 40 Ga. App. 633, 151 S.E. 42 (1929); *City of Silvertown v. Harcourt*, 51 Ga. App. 160, 179 S.E. 772 (1935); *City of Barnesville v. Sappington*, 58 Ga. App. 27, 197 S.E. 342 (1938); *Harris v. City of Rome*, 59 Ga. App. 279, 200 S.E. 337 (1938).

Municipalities generally have a ministerial duty to keep their streets in repair, and municipalities are liable for injuries resulting from defects after actual notice, or after the defect has existed for a sufficient time to infer notice. *Bush v. City of Gainesville*, 105 Ga. App. 381, 124 S.E.2d 667 (1962).

Obligation of a city to maintain portions of the state highway system within the city's corporate limits if the city has "constructed or agreed to perform the necessary maintenance of such roads" applies to public sidewalks. *Williams v. City of Social Circle*, 225 Ga. App. 746, 484 S.E.2d 687 (1997).

City was liable for defect in sidewalk. — Since a victim was injured on the city's sidewalk, the trial court erred in granting summary judgment to the city as the pleadings were sufficient to raise the inference that the city, having repaired the sidewalk, had implied knowledge of the defect therein. *English v. City of Macon*, 259 Ga. App. 766, 577 S.E.2d 837 (2003).

City was not liable for injuries to plaintiff who stepped in a hole in a grassy area about nine feet from the edge of the paved street since the evidence showed that the hole was not located on a city street or sidewalk. *City of Vidalia v. Brown*, 237 Ga. App. 831, 516 S.E.2d 851 (1999).

City was relieved of liability for the injuries sustained by the injured parties when the parties were hit by a motor vehicle at an intersection that was dark due to a loose hinge on a streetlight, under O.C.G.A. § 32-4-93(a), as the city did not

have actual notice of the problem, and the problem had not existed for any appreciable length of time so as to give the city constructive notice of the problem. *Roquemore v. City of Forsyth*, 274 Ga. App. 420, 617 S.E.2d 644 (2005).

City had no notice or knowledge of drainage problem. — Motorist's failure to show a city's knowledge or notice of a roadway drainage problem, which caused a traffic accident, defeated the motorist's negligence and nuisance claims against the city. *Thompson v. City of Atlanta*, 274 Ga. App. 1, 616 S.E.2d 219 (2005).

City immune for operation of a fountain. — City was entitled to sovereign immunity under O.C.G.A. § 32-4-93 in a pedestrian's claim against the city for negligent maintenance of a fountain which the pedestrian argued resulted in ice forming on a sidewalk where the pedestrian slipped and fell. The pedestrian failed to point to specific evidence of the city's actual or constructive notice of any defect in the fountain. *Naraine v. City of Atlanta*, 306 Ga. App. 561, 703 S.E.2d 31 (2010).

Duty exists as to travel both by day and by night. — General rule of law is that a municipal corporation must keep the municipality's streets and sidewalks reasonably safe for travel in the ordinary mode by night as well as by day. If the municipality fails to do so, the municipality is liable in damages for injuries sustained in consequence. *Mayor of Buford v. Medley*, 58 Ga. App. 48, 197 S.E. 494 (1938).

City responsible for maintaining annexed highways. — Where a territory is lawfully annexed to a city, the new area becomes a part of the city for all municipal purposes, the public highways therein become streets of the city, and the city becomes chargeable with the duty of using reasonable diligence in seeing that the streets are placed and kept in such condition as will make passage thereon reasonably safe. *Bush v. City of Gainesville*, 105 Ga. App. 381, 124 S.E.2d 667 (1962).

Maintenance of portions of state highway system. — When the Department of Transportation fails to maintain those portions of the state highway system lying within a municipality's corpo-

rate limits as required by law, a municipality can be held liable for such failure where the municipality agreed to perform the necessary maintenance. *City of Fairburn v. Cook*, 188 Ga. App. 58, 372 S.E.2d 245, cert. denied, 188 Ga. App. 911, 372 S.E.2d 245 (1988).

Even though a city agreed to maintain a portion of a state highway, the city was not responsible for correcting design and construction deficiencies. *Duncan v. City of Macon*, 221 Ga. App. 710, 472 S.E.2d 455 (1996).

City was not responsible for maintenance of a traffic signal device at the intersection of a city street and a state highway, where the Department of Transportation engineered, constructed, maintained, and set the timing sequence for the device and the city had no discretion or decision-making power with regard to the device's location, sequencing, or timing. *McPherson v. City of Fort Oglethorpe*, 200 Ga. App. 129, 407 S.E.2d 99 (1991).

No authority to maintain overgrown area bordering intersection. — In a wrongful death action, the trial court did not err in finding the Georgia Department of Transportation immune from suit from liability to the decedent's estate and survivors for failing to maintain an overgrown area of shrubbery that bordered an intersection, as neither O.C.G.A. § 32-2-2, when read in concert with O.C.G.A. § 32-4-93, nor O.C.G.A. § 50-21-24(8) imposed liability on the department; hence, maintenance of the area did not constitute a "substantial" or "other major" maintenance activity. *Welch v. Ga. DOT*, 283 Ga. App. 903, 642 S.E.2d 913 (2007).

Failure of city to erect a stop sign at an intersection was not a "defect" which would exempt the city from claiming immunity under O.C.G.A. § 32-4-93. *McKinley v. City of Cartersville*, 232 Ga. App. 659, 503 S.E.2d 559 (1998).

Defects for which liability arises generally. — Defects in the municipality's streets for which a municipal corporation may be held liable have been held to include objects adjacent to, and suspended over, the municipality's streets and sidewalks, the presence of which renders the use of these thoroughfares more hazard-

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ous. *City of Bainbridge v. Cox*, 83 Ga. App. 453, 64 S.E.2d 192 (1951); *Richards v. Mayor of Americus*, 158 Ga. App. 693, 282 S.E.2d 122 (1981).

Municipal corporation is liable for defects which are gradually brought about by the forces of nature, and for defects or obstructions created in or placed on a public street by strangers which render such street unsafe for normal travel, where the municipality had notice of such defect or obstruction and failed to exercise ordinary care in remedying or removing the defect or obstruction, or where the defect or obstruction had existed for a sufficient length of time, and when taken in connection with the nature of the defect or obstruction, it could be reasonably said that the city should have known, and had reasonable time to repair or remove the defect or obstruction. *City of Barnesville v. Sappington*, 58 Ga. App. 27, 197 S.E. 342 (1938).

Municipality is bound to keep the municipality's streets in a reasonably safe condition for travel by night as well as by day, and is responsible if the municipality fails to exercise ordinary care to accomplish safety, where the municipality knows or should know that the street is in an unsafe condition. Where a defect in a street has existed for so long a time that the city in the exercise of ordinary diligence ought to have discovered and remedied the defect, actual notice is unnecessary. *Mayor of Buford v. Medley*, 58 Ga. App. 48, 197 S.E. 494 (1938); *Mason v. Crowe*, 88 Ga. App. 191, 76 S.E.2d 432 (1953).

Where the defective condition of a sidewalk is due to the failure to repair the sidewalk or due to the negligent acts of third persons, a city is not liable unless it had actual notice of the defect, or unless the city appears from the facts in the case that the defect could have been ascertained by the exercise of ordinary care, as when the defect existed for such a length of time that notice will be implied. *City of Rome v. Stone*, 46 Ga. App. 259, 167 S.E. 325 (1933).

Liability for minor defects. — Defect in a city sidewalk, as described in a peti-

tion suing a municipality for personal injuries, although of a size and nature ordinarily classed as a "minor defect," was not minor enough to require holding as a matter of law on demurrer (now motion to dismiss) that the defendant was not negligent in performing the defendant's legal duty to keep the defendant's public streets and sidewalks reasonably safe enough for passage, when it appeared that the defendant knew or should have known of the defect in time to repair the defect or set up warning signals. *City of Rome v. Richardson*, 62 Ga. App. 85, 7 S.E.2d 927 (1940).

Liability for acts of agents and employees. — Municipal corporation is liable for defects and obstructions existing in one of the municipality's public streets created in or placed thereon by the municipality's own agents or employees, which renders such street unsafe to persons passing along such street. *City of Barnesville v. Sappington*, 58 Ga. App. 27, 197 S.E. 342 (1938) (decided under former Code 1933, § 69-301).

Agency relationship between municipality and state. — Where a municipal corporation selected and paid a contractor to grade the municipality's streets although the State Highway Department (now Department of Transportation) agreed to pay part of the costs, and the work was to be performed under an engineer appointed by the municipality, whose selection, plans, and specifications had to be approved by the department, and the department was to inspect the work only in a general way to see that the plans and specifications were complied with, the municipality, in performing the work, was an independent contractor, and not the agent of the department, regardless of whether the portion of the street graded, within the municipality, had become a state-aid road. *Gaines v. City of Calhoun*, 42 Ga. App. 89, 155 S.E. 214 (1930) (decided under former Code 1910, § 828).

City liable although state prescribed specifications for grading. — When the owner of property abutting upon the street graded by a municipality sustained damage to the value of the owner's property because the municipality changed the grade of the street in accordance with plans and specifications pre-

scribed by the State Highway Department (now Department of Transportation) the municipality is not relieved of liability to the property owner merely because the State Highway Department (now Department of Transportation) prescribed the plans and specifications. *Gaines v. City of Calhoun*, 42 Ga. App. 89, 155 S.E. 214 (1930) (decided under former Code 1910, § 828).

Distinction between discretionary nonfeasance and negligent maintenance by city. — Clear line is drawn between discretionary nonfeasance and negligent maintenance of something erected by the city, in the city's discretion, in such manner as to create a dangerous nuisance, and which amounts to misfeasance. *Christensen v. Floyd County*, 158 Ga. App. 274, 279 S.E.2d 723 (1981).

Deciding whether to erect or not to erect a traffic control sign or to maintain the sign after installation is an exercise of a governmental function by a municipality, and the municipality is not liable for any negligent performance of this function. *Christensen v. Floyd County*, 158 Ga. App. 274, 279 S.E.2d 723 (1981).

Traffic controls which are government functions for safety. — Operation and maintenance of traffic lights and other traffic control devices is a governmental function conducted on behalf of the public safety and for the negligent performance of which municipal corporations are not liable. *Barnett v. City of Albany*, 149 Ga. App. 331, 254 S.E.2d 481 (1979).

Driver's allegations of negligence against a city for negligent maintenance of a stop sign, which was allegedly obscured by foliage, were subject to summary judgment based on the city's sovereign immunity pursuant to O.C.G.A. § 36-33-1(b). The driver's nuisance claim was barred because the driver failed to show the city's awareness of a problem with the stop sign. *Albertson v. City of Jesup*, 312 Ga. App. 246, 718 S.E.2d 4 (2011), cert. denied, 2012 Ga. LEXIS 245 (Ga. 2012).

Traffic controls which are unrelated to street maintenance. — Operation and maintenance of traffic lights and other traffic control devices are not related

to the maintenance of the streets as such, and liability of a municipality for the negligent failure to maintain a stop sign after the stop sign is once erected cannot be predicated on the theory that the stop sign is a part of street maintenance. *Barnett v. City of Albany*, 149 Ga. App. 331, 254 S.E.2d 481 (1979).

City liable for defect despite franchise granted to power company. — After a bus passenger is injured when the passenger's arm, which is propped in an open bus window, is wedged between the bus window frame and a power pole installed by an electric company under a franchise agreement with a city, and the city asserts that the city granted the franchise an exercise of the city's legislative powers for which the city cannot be held liable under O.C.G.A. § 36-33-1, the city's claim of governmental immunity is not the issue; the issue instead is the liability of the city under O.C.G.A. § 32-4-93 for the alleged defect in a public road in the city's municipal street system. *Kicklighter v. Savannah Transit Auth.*, 167 Ga. App. 528, 307 S.E.2d 47 (1983).

City not liable when railroad negligently placed warning device. — City was not liable in public nuisance action for injuries to plaintiff arising out of train and car collision allegedly due to negligent placement of warning device at railroad where the road and warning device in question were constructed and maintained by the county or railroad company and where there was no evidence that the city had assumed responsibility for maintenance of that section of the road in question. *Peluso v. Central of Ga. R.R.*, 165 Ga. App. 215, 299 S.E.2d 51 (1983).

Liability of owner whose property abuts street on highway. — Owner of property abutting upon a street or highway is not, by virtue thereof, liable for defects in the streets or highways. *Ellis v. Southern Grocery Stores, Inc.*, 46 Ga. App. 254, 167 S.E. 324 (1933).

If a city ordinance can be taken and construed as meaning that the owner of any improved or vacant premises of whatever character and size, within the limits of a city, becomes instantly liable for injuries to third persons from the moment any trash, banana peeling, ice, snow, or other

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object falls upon the abutting sidewalk, without fault or knowledge on the part of such owner, it would manifestly be a rule so harsh and unconscionable as would render such municipal ordinance unconstitutional and void as violative of Ga. Const. 1877, Art. I, Sec. I, Para. III (see Ga. Const. 1983, Art. I, Sec. I, Para. I). *Ellis v. Southern Grocery Stores, Inc.*, 46 Ga. App. 254, 167 S.E. 324 (1933).

When abutting property owner owes no duty to third person because of a defective condition of the sidewalk against which the property abuts, unless, the defect was brought about by such owner personally, the city could not by ordinance, under guise of police regulation, impose the city's own liability upon such property owner or make the owner liable to third persons for acts other than the owner's own. *Ellis v. Southern Grocery Stores, Inc.*, 46 Ga. App. 254, 167 S.E. 324 (1933).

Rule that an owner of property abutting upon a street or highway is not, because of ownership, liable for defects in the street or highway does not apply when the owner of abutting property creates a defect or nuisance in a street or highway. In this event the owner is liable, not because the owner owns the abutting property, but because the owner creates or maintains the things from which injury results. *Ellis v. Southern Grocery Stores, Inc.*, 46 Ga. App. 254, 167 S.E. 324 (1933).

Liability for injury sustained during punitive road work. — City is not liable in damages for an injury sustained by the plaintiff after the plaintiff had been convicted of a penal offense in the city's police court and sentenced to work on the city's public streets, although the plaintiff's injury occurred while the plaintiff was thus engaged in such work, and resulted solely from the city's negligence, as keep and maintenance of the convict and the work the convict was required to perform upon the city's public streets is a governmental function, for the negligent performance of which the city is not liable to the convict/plaintiff in damages for a resulting injury. *Hurley v. City of Atlanta*, 208 Ga. 457, 67 S.E.2d 571 (1951), cert. denied, 343 U.S. 917, 72 S. Ct. 650, 96 L. Ed. 1331 (1952).

Removal of warning devices by third persons. — If proper guards are erected or proper lights or signals are placed by city to give warning of danger caused by excavation or obstruction in a street, and such guards or signals are removed or rendered ineffective by third parties, or from causes over which the city has no control, the city is absolved from resultant damage unless the city fails, after notice of the removal of such warnings, to replace the warnings within a reasonable time. *City of Rome v. Alexander*, 63 Ga. App. 301, 11 S.E.2d 52 (1940).

Defect where street abuts state highway. — Notwithstanding that a city was not negligent in construction of an asphalt street, it would, if negligent in maintaining a dangerous hole or defect where the asphalt pavement joined cement state highway, be responsible for any injury sustained by an occupant of an automobile if the hole or defect caused the car to go out of control and to swerve along the asphalt street, although the street was reasonably safe for automobile travel in the usual and ordinary mode. *Mayor of Buford v. Medley*, 58 Ga. App. 48, 197 S.E. 494 (1938).

Lighting of streets. — In the absence of any statutory requirement, a municipal corporation need not light the municipality's streets with lamps, and no liability results from the municipality's decision whether or not to light the municipality's streets. *Lundy v. City Council*, 51 Ga. App. 655, 181 S.E. 237 (1935).

If a city performs the city's duty to keep the city's streets in a reasonably safe condition, the mere absence of an ordinary street light at a given point will not constitute such negligence as to render the city liable. *Lundy v. City Council*, 51 Ga. App. 655, 181 S.E. 237 (1935).

Operation of a traffic light conducted in behalf of the public safety is a governmental function in the exercise of the police power for the negligent performance of which a city is not liable. *Stanley v. City of Macon*, 95 Ga. App. 108, 97 S.E.2d 330 (1957).

Street used for school access only. — Street situated entirely on property owned by a municipal corporation and devoted entirely by the municipality to

school purposes, which street serves only as an entrance to the school buildings situated thereon, and which exists for the use of the general public only in the sense that any member of the general public desiring access to the school buildings and grounds could use the street, is not such a public street that the city will be held liable for the street's negligent construction and maintenance. *City of Atlanta v. Keiser*, 50 Ga. App. 600, 179 S.E. 192 (1935).

Planning and construction of safety zone. — In the planning and the construction of a safety zone on a city street, the city is engaged in a governmental function and could not be held liable for any error in judgment in such planning. *Beall v. City of Atlanta*, 72 Ga. App. 760, 34 S.E.2d 918 (1945).

For a discussion of liability for maintenance of safety zone, see *Beall v. City of Atlanta*, 72 Ga. App. 760, 34 S.E.2d 918 (1945).

Power lines. — When, in a city street about 80 feet wide, the city has authorized the erection and maintenance, longitudinally down the middle of the street, of a series of poles supporting electrical wires, and on either side of the poles there remains a driveway approximately 40 feet in width each, and the poles cause no substantial danger or interference with the lawful use of the road, the maintenance of the poles in the street is not negligence, either as a matter of law or in fact. *South Ga. Power Co. v. Smith*, 42 Ga. App. 100, 155 S.E. 80 (1930).

Because material fact questions remained regarding the quality of a utility company's inspection and whether the company had constructive knowledge of an electrical wiring defect outside of a homeowner's home, summary judgment was properly denied. *Schuessler v. Bennett*, 287 Ga. App. 880, 652 S.E.2d 884 (2007), cert. denied, 2008 Ga. LEXIS 230 (Ga. 2008).

Tree overhanging sidewalk. — Even if a tree actually grew in a park so that the tree's maintenance is a governmental function, if some of the tree's limbs overhanging a sidewalk not part of a park so that the sidewalk was not in a reasonably safe condition, so that persons could pass along

the sidewalk in the ordinary methods of travel with reasonable safety, a municipality would be liable for any injuries caused by such unsafe condition, if other requirements of notice and negligence obtained. *Mayor of Savannah v. Harvey*, 87 Ga. App. 122, 73 S.E.2d 260 (1952) (decided under former Ga. L. 1895, p. 306).

City park and tree commission liability for negligently maintained trees. — Act creating a park and tree commission for a city does not relieve the city of the city's duty to keep the city's sidewalks in a reasonably safe condition so that persons could pass along the sidewalks in the ordinary methods of travel with reasonable safety, and a petition, alleging injuries due to the negligence of the city in performing such duty, states a cause of action as against a general demurrer (now motion to dismiss). *Mayor of Savannah v. Harvey*, 87 Ga. App. 122, 73 S.E.2d 260 (1952).

City maintenance of drainage culverts. — Summary judgment was granted in favor of a city upon a father's claim of negligence under O.C.G.A. § 32-4-93(a) because: (1) there was no showing that the city had a legal duty to expand the culvert pipe in which the child drowned, to widen the shoulder of the street, or to erect a guardrail, as no statute required the city to take these actions, and the city's construction code did not impose a duty with regard to the culvert; (2) there was no evidence that the city negligently maintained the culvert; and (3) the city had no actual or constructive notice of flooding problems near the culvert or of defects in the culvert. *Walden v. City of Hawkinsville*, No. 5:03-CV-0398 (DF), 2005 U.S. Dist. LEXIS 21694 (M.D. Ga. Sept. 21, 2005).

Cited in *Broadnax v. City of Atlanta*, 149 Ga. App. 611, 255 S.E.2d 86 (1979); *City of Social Circle v. Sims*, 228 Ga. App. 582, 492 S.E.2d 240 (1997).

Trial Procedure

Allegation that walkway is part of municipal streets and sidewalks. — When it is alleged that the walkway on which the plaintiff was injured is a part of the sidewalk and street system of a municipal corporation there must be some

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evidence that the walkway was intended and maintained by the city for such use. *Kesot v. City of Dalton*, 94 Ga. App. 194, 94 S.E.2d 90 (1956).

Evidence as to presence or character of city safeguard. — If the question is whether a city has performed the city's duty in regard to keeping a street in a reasonably safe condition, or whether the city has been negligent in that regard, and in respect to failing to erect proper safeguards or to placing proper lights at a dangerous place where an injury occurs, the character of the light at that point, or the light's absence, may be shown as a circumstance bearing on the question of negligence. *Lundy v. City Council*, 51 Ga. App. 655, 181 S.E. 237 (1935).

If a municipality obstructs a street or allows the street to remain obstructed, or out of repair, or in a dangerous condition, the fact of the absence of lights or safeguards of any character at the place or that a street light established at that point has been allowed to remain unlit for a number of nights before an injury occurred to a pedestrian may be considered, along with the other evidence, in determining whether there is negligence in failing to keep the street in a reasonably safe condition. *Lundy v. City Council*, 51 Ga. App. 655, 181 S.E. 237 (1935).

Evidence which raises fact question of implied notice to city. — Evidence that a power pole was maintained in the same location for many years and that the pole bore scrape marks from passing vehicles is sufficient to raise a fact question of implied notice to the city. *Kicklighter v. Savannah Transit Auth.*, 167 Ga. App. 528, 307 S.E.2d 47 (1983).

Evidence of notice required. — Because there was a lack of evidence that the city had actual or constructive knowledge of a defect created by a sewer overflow resulting in the absence of the manhole cover, the issue of negligence became a matter of law. *Quinn v. City of Cave Spring*, 243 Ga. App. 598, 532 S.E.2d 131 (2000).

Evidence needed to defeat summary judgment. — Once a city put forth evidence showing that the city had in-

stalled pipes in a culvert through which a creek ran under a street in compliance with municipal standards for culvert work; it was incumbent upon a resident claiming negligence to come forward with some evidence of negligent installation of the pipes in order to defeat summary judgment; as the resident had not done so, it was proper to grant summary judgment for the city. *Gilbert v. City of Jackson*, 287 Ga. App. 326, 651 S.E.2d 461 (2007).

Notice of defect. — County water and sewer authority was not liable to motorist injured when street pavement collapsed, since the authority had no duty to inspect water lines under the street in the absence of any actual or constructive notice of a defect. *Andrews v. City of Macon*, 191 Ga. App. 745, 382 S.E.2d 739 (1989).

Constructive notice. — While the question of constructive notice is ordinarily one for the jury, in the absence of any evidence as to constructive notice there is no reasonable ground for two opinions, and thus the issue of negligence is a matter of law, not a question of fact for the jury. *Andrews v. City of Macon*, 191 Ga. App. 745, 382 S.E.2d 739 (1989).

In an action for injuries sustained by plaintiff when plaintiff stepped in a hole on the right-of-way maintained by the city, the plaintiff's opinion that "the hole appeared to have been there for a significant period of time," without other evidence of how long the hole had been in existence, was insufficient to raise a factual question as to the city's constructive notice of the hole. *Brumbelow v. City of Rome*, 215 Ga. App. 321, 450 S.E.2d 345 (1994).

Even though the size of the depression in which the plaintiff tripped and the grass growing over the depression presented some evidence of age, the factors did not establish that the depression was so old as to provide a basis for concluding that the city had constructive knowledge of the hazard. *Rischack v. City of Perry*, 223 Ga. App. 856, 479 S.E.2d 163 (1996).

Summary of means of showing implied or constructive notice of a defect. — See *Crider v. City of Atlanta*, 184 Ga. App. 389, 361 S.E.2d 520, cert. denied, 184 Ga. App. 909, 361 S.E.2d 520 (1987).

When notice presumed. — If a defect has existed in a sidewalk for such a length

of time that by reasonable diligence in the performance of their duties the defect ought to have been known by the proper authorities, notice will be presumed, and proof of actual knowledge will not be necessary in order to render the municipality liable for injuries occasioned thereby. *Ellis v. Southern Grocery Stores, Inc.*, 46 Ga. App. 254, 167 S.E. 324 (1933).

Knowledge on the part of a city of a defect in one of the city's sidewalks will be presumed when the defect has continued for such a length of time that, by reasonable diligence in the performance of the city's duties, the defect's existence should have become known to the proper authorities. *City of Silvertown v. Harcourt*, 51 Ga. App. 160, 179 S.E. 772 (1935).

Time needed for implied notice depends on defect and location. — Length of time that must elapse from the creation or placing of an obstruction in the street or sidewalk of a municipality, in order to authorize a finding of negligence against the municipality, will vary according to the location and nature of the defect. *City of Barnesville v. Sappington*, 58 Ga. App. 27, 197 S.E. 342 (1938).

It was error to overrule the city's motion for judgment n.o.v. in the case of a bus passenger who was injured when a portion of street pavement collapsed, where a crack in the pavement which could have existed for three days prior to the collapse was not itself the defect, when three days was not a sufficient time for surface or rainwater entering the crack to have undermined the pavement, and when there was nothing to indicate that if the city had investigated the crack that the cavity which caused plaintiff's injuries would have been discovered. *City of Atlanta v. Hightower*, 177 Ga. App. 140, 338 S.E.2d 683 (1985).

Jury questions. — In an action against a municipal corporation for injuries sustained while running along a certain street in the city after dark, which street was alleged to have been in a defective and unsafe condition, questions of whether the city was negligent in failing to keep the street and walkway in question in a reasonably safe condition, whether the plaintiff was guilty of negli-

gence in running along the street and walkway on the occasion in question, and what negligence constituted the proximate cause of the injury, are questions which should have been submitted to a jury. *Harris v. City of Rome*, 59 Ga. App. 279, 200 S.E. 337 (1938).

When an action is brought against a municipality for injuries alleged to have been brought about by the existence of an obstruction in a public street of the municipality which was not shown to have been placed there by the city, when no actual notice of the obstruction is shown, the issue of whether or not the obstruction had existed for a sufficient length of time to charge the city with negligence in failing to discover and remove the obstruction should be generally left to the jury. *City of Barnesville v. Sappington*, 58 Ga. App. 27, 197 S.E. 342 (1938); *City of Bainbridge v. Cox*, 83 Ga. App. 453, 64 S.E.2d 192 (1951).

Whether a defect or hole in a city street gave a right of action to a person injured thereby is ordinarily a question for the jury, because it is a complicated question of fact, involving the depth of the hole or defect, the defect's appearance to travelers on the street, and the danger which might have been anticipated and guarded against by the city in the exercise of reasonable forethought. *Mayor of Buford v. Medley*, 58 Ga. App. 48, 197 S.E. 494 (1938).

When it appears that a city has permitted an excavation in a street, it becomes a question for the jury to determine as to the extent and character of the warnings or signals placed which are necessary and sufficient to give notice to members of the public using such street of the presence of such excavation or obstruction. *City of Rome v. Alexander*, 63 Ga. App. 301, 11 S.E.2d 52 (1940).

While it is true that a city would not be liable for the existence of a latent defect not discoverable by the exercise of ordinary care, whether the defect was such as the municipality should have discovered the defect in the exercise of ordinary care in keeping the streets and sidewalks in a reasonably safe condition is a question for the jury. *City of Bainbridge v. Cox*, 83 Ga. App. 453, 64 S.E.2d 192 (1951).

RESEARCH REFERENCES

Am. Jur. Proof of Facts. — Defective Design or Setting of a Traffic Control Signal, 6 POF2d 683.

Municipality's Failure, in Making Street Repairs, to Avoid Injury to Adjacent Property, 8 POF2d 361.

Highway Defects — Road Shoulder, 16 POF2d 1.

Highway Defects — Barrier on Guard-rail, 17 POF2d 413.

Highway Defects — Warning Device, 18 POF2d 487.

Public Authority's Failure to Remove or Guard Against Ice or Snow on Surface of Highway or Street, 21 POF2d 251.

Highway Defects — Liability for Failure to Install Median Barrier, 50 POF2d 63.

Highway Defects — Negligent Design or Maintenance of Curve, 14 POF3d 527.

Establishing Liability of a State or Local Highway Administration, Where Injury Results from the Failure to Place or Maintain Adequate Highway Signs, 31 POF3d 351.

Governmental Liability for Failure to Maintain Trees Near Public Way, 41 POF3d 109.

Governmental Liability for Injury to Landowner's Property from Road Construction Activities on Neighboring Land, 65 POF3d 311.

Proof of Roadside Hazard Case, 71 POF3d 1.

Liability of Municipality or Abutting Landowner for Injury Caused by Defective Condition of Sidewalk, 86 POF3d 327.

C.J.S. — 39A C.J.S., Highways, § 162. 40 C.J.S., Highways, § 327 et seq.

ALR. — Responsibility of county for injury from defect in highway, 2 ALR 721.

Applicability of statute or ordinance requiring notice of claim for damages from injuries in street as affected by the conditions which caused the injury, 10 ALR 249.

Liability of a municipal corporation for injuries caused by the unsafe condition of a street resulting from or incidental to work performed under a permit authorizing the construction, alteration, repair, or demolishing of a building or its appurtenances, 11 ALR 1343.

Liability of municipality for act of employee engaged in sprinkling or cleaning

streets or removing garbage or rubbish, 14 ALR 1473; 32 ALR 988; 52 ALR 187; 60 ALR 101; 156 ALR 692; 156 ALR 714.

Negligent or unlawful use of road as a defect within statute rendering county, town, or other political division liable for damages, 22 ALR 588.

Liability of municipality for injury from ice or snow on crosswalk, 32 ALR 1293.

Liability of municipality for damages by fire because of condition of streets delaying or impeding fire department, 33 ALR 694.

Duty to make highway safe for children as including duty to prevent their leaving it at a place of danger, 36 ALR 309.

Personal liability of public official for personal injury on highway, 40 ALR 39; 57 ALR 1037.

Municipal liability for drowning of child in pond created by its failure to provide drainage in constructing highway embankment, 40 ALR 488.

Liability of municipality for condition of the part of private driveway which is within the street, 42 ALR 1281.

Liability of municipality for injury to lateral support in grading street, 44 ALR 1494.

Liability of municipal corporation for injury incident to coasting in street, 46 ALR 1434.

Liability of municipality for injury to traveler in alley, 48 ALR 434.

Notice of condition of street due to acts of municipal employees as condition precedent to municipal liability, 50 ALR 1193.

Liability of municipality for injury or damage due to sprinkling of street, 51 ALR 575.

Liability of municipality for negligence not affecting the condition of the street itself by its agents or servants while engaged in making street improvements, 52 ALR 524.

Liability of municipal corporations and their licensees for the torts of independent contractors, 52 ALR 1012.

Duty and liability of public authorities as to conditions beyond limits of highway which affect safety or comfort of travel, 53 ALR 764.

Liability for conditions in space be-

tween lot lines and sidewalk actually within limits of street, but apparently part of the abutting property, 56 ALR 220.

Duty of municipality to remedy conditions due to traffic rendering roadway dangerous for automobiles, 63 ALR 208.

Duty and liability as to construction or maintenance of bridge as respects weight of load, 68 ALR 605.

Liability for injury by stepping or falling into opening in sidewalk while doors are open or cover off, 70 ALR 1358.

Liability of municipality for injury due to defective catch-basin covers, and the like, maintained in street in connection with drainage or sewer system, 71 ALR 753.

Municipal liability for injuries from snow and ice on sidewalk, 80 ALR 1151; 39 ALR2d 782.

Waiver of, or estoppel to assert, failure to give required notice of claim of injury to municipality, county, or other governmental agency or body, 82 ALR 749; 159 ALR 329; 65 ALR2d 1278.

Liability of municipality for injury to person or property due to improper plan for or defects in original construction of street or highway, 90 ALR 1502.

Failure of municipality to adopt, or to enforce, traffic regulations as ground of its liability for damage to property or person, 92 ALR 1495; 161 ALR 1404.

Liability of municipality for injury or damage by automobile colliding with temporary obstruction in connection with alteration or repair of street, 100 ALR 1386.

Abandonment or discontinuance of use of rails, poles, wires, or other obstructions having previous lawful situs in street as affecting liability of municipality or another for personal or property damage resulting therefrom, 102 ALR 677.

Liability of public for injury or damage from slides or fall of object from embankment at side of highway, 107 ALR 596.

Municipal liability for injury due to condition of street, 109 ALR 605.

Degree of inequality in sidewalk which makes question for jury or for court, as to municipality's liability, 119 ALR 161; 37 ALR2d 1187.

Liability of municipality or other governmental body to pedestrian for injury in street closed or partially closed during construction or repairs, 119 ALR 841.

Duty and liability of municipality, or other political subdivision, as regards condition of streets as extending to place or structure not strictly part of street but commonly used by public as an extension of or by-pass between streets, 126 ALR 443.

Liability of municipality for injury or damage due to pole maintained by third person in street or highway, 128 ALR 1269.

Liability for injury to pedestrian predicated upon slope or contour of sidewalk or crosswalk, or slippery nature of material of which it is constructed, 133 ALR 1026.

Scope of employment of municipal employee engaged in work in street or highway, or in directing traffic, as regards municipal responsibility for his tort, 136 ALR 1361.

Liability for injury to pedestrian due to condition of street or highway as affected by his blindness or other physical disability, 141 ALR 721.

Duty of municipality to children playing in street, 154 ALR 1330.

Cleaning and sprinkling of streets as governmental or private function as regards municipal immunity from liability for tort, 156 ALR 692.

Liability of governmental unit for collision with safety and traffic-control devices in traveled way, 7 ALR2d 226.

Liability of municipality for damage caused by fall of tree or limb, 14 ALR2d 186.

Liability of municipal corporation to pedestrian for slippery condition of sidewalk caused by deposits of earth or mud thereon, 16 ALR2d 1290.

Liability of municipal corporation for injury or death occurring from defects in, or negligence in construction, operation, or maintenance of its electric street-lighting equipment, apparatus, and the like, 19 ALR2d 344.

Liability for injury on parking or strip between sidewalk and curb, 19 ALR2d 1053; 98 ALR3d 439.

Installation or operation of parking meters as within governmental immunity from tort liability, 33 ALR2d 761.

Liability of municipality for injury resulting from slippery condition of walk concurring with defects therein, 41 ALR2d 739.

Liability for negligence of public body or political subdivision operating toll bridge, 43 ALR2d 550.

Duty and liability of municipality as regards barriers for protection of adult pedestrians who may unintentionally deviate from street or highway into marginal or external hazards, 44 ALR2d 633.

Liability of municipality for failure to erect traffic warnings against entering or using street which is partially barred or obstructed by construction or improvement work, 52 ALR2d 688.

Liability for injury or damage by tree or limb overhanging street or highway, 54 ALR2d 1195.

Liability of state, municipality, or public agency for vehicle accident occurring because of accumulation of water on street or highway, 61 ALR2d 425.

Municipal liability for injury or death from collision with rope or clothesline across sidewalk or street, 75 ALR2d 565.

Liability of municipal corporation to person injured in fall because of slippery substance such as paint or oil deliberately placed upon surface of street or sidewalk, 81 ALR2d 1194.

Liability of municipality for injury or death resulting from temporary condition or obstruction in street in connection with holiday, entertainment, parade or other special event, 84 ALR2d 508.

Liability of municipality for injury or death from defects or obstructions in sidewalk to one riding thereon on bicycle, tricycle, or similar vehicle, 88 ALR2d 1423.

Liability for injury from defective condition or improper operation of lift bridge or drawbridge, 90 ALR2d 105.

Existence of actionable defect in street or highway proper as question for court or for jury, 1 ALR3d 496.

Liability of highway authorities arising out of motor vehicle accident allegedly caused by failure to erect or properly maintain traffic control device at intersection, 34 ALR3d 1008.

Liability of governmental unit for injuries or damage resulting from tree or limb falling onto highway from abutting land, 95 ALR3d 778.

Liability, in motor vehicle-related cases, of governmental entity for injury or death resulting from ice or snow on surface of highway or street, 97 ALR3d 11.

Liability, in motor vehicle-related cases, of governmental entity for injury or death resulting from failure to repair pothole in surface of highway or street, 98 ALR3d 101.

Liability, in motor vehicle-related cases, of governmental entity for injury or death resulting from defect or obstruction on roadside parkway or parking strip, 98 ALR3d 439.

Liability, in motor vehicle-related cases, of governmental entity for injury or death resulting from design, construction, or failure to warn of narrow bridge, 2 ALR4th 635.

Liability, in motor vehicle-related cases, of governmental entity for injury, death, or property damage resulting from defect or obstruction in shoulder of street or highway, 19 ALR4th 532.

Governmental liability for failure to reduce vegetation obscuring view at railroad crossing or at street or highway intersection, 22 ALR4th 624.

Liability of governmental entity for damage to motor vehicle or injury to person riding therein resulting from collision between vehicle and domestic animal at large in street or highway, 52 ALR4th 1200.

Duty of public authorities to erect and maintain warning signs or devices for curves in highway, 57 ALR4th 342.

Governmental tort liability as to highway median barriers, 58 ALR4th 559.

Legal aspects of speed bumps, 60 ALR4th 1249.

State and local government liability for injury or death of bicyclist due to defect or obstruction in public bicycle path, 68 ALR4th 204.

32-4-94. Standards for construction of curb ramps.

(a) The standard for construction of curbs on each side of any municipal street or of any connecting street or road for which curbs

have been prescribed by the governing body of the municipal corporation having jurisdiction thereover shall be not less than one ramp per lineal block giving on the crosswalks at intersections. Such ramps shall be at least 40 inches wide and shall be so constructed as to allow reasonable access to the crosswalk for physically disabled persons.

(b) Standards set for curb ramping under subsection (a) of this Code section shall not apply to any curb existing on July 1, 1974, but shall apply to all new curb construction and to all replacement curbs constructed at any point in a block which gives reasonable access to a crosswalk; provided, however, that the standards set for curb ramping under subsection (a) of this Code section shall apply to curbs on each side of the street circling the state capitol; provided, further, that the standard for construction of curbs on each side of the street circling the state capitol shall be not less than two ramps per lineal block giving on the crosswalks at intersections. (Ga. L. 1974, p. 514, § 1; Ga. L. 1995, p. 1302, § 14.)

Cross references. — Access to and use of public facilities by physically disabled persons generally, T. 30, C. 3.

RESEARCH REFERENCES

- Am. Jur. 2d.** — 39 Am. Jur. 2d, Highways, Streets, and Bridges, § 8.
- C.J.S.** — 64 C.J.S., Municipal Corporations, § 1141.
- ALR.** — Right of municipality to hasten flow of surface water along natural drain ways by improvements of street or highway, 36 ALR 1463.
- Liability of municipality for injury to lateral support in grading street, 44 ALR 1494.

PART 2

EXERCISE BY MUNICIPALITIES OF POWER TO
CONTRACT GENERALLY

RESEARCH REFERENCES

- ALR.** — Construction and effect of “changed conditions” clause in public works or construction contract with state or its subdivision, 56 ALR4th 1042.

32-4-110. “Contract” defined.

As used in this part, the term “contract” means a contract or subcontract entered into by a municipality with any person, the state or federal government or an agency of either, with another municipality or municipalities, with a county or counties, or with any combination of any of the foregoing entities, for the construction, reconstruction, or maintenance of all or part of a public road in said municipality, including but not limited to a contract or subcontract for the purchase

of materials, for the hiring of labor, for professional services, or for other things or services incident to such work. (Code 1933, § 95A-831, enacted by Ga. L. 1973, p. 947, § 1.)

32-4-111. Authority of municipality to contract; form of contracts; approval of contracts by resolution.

A municipality shall have the authority to contract as set forth in this part and in Part 1 of this article. Any contract for work on all or part of the municipal road system shall be in writing and be approved by resolution which shall be entered on the minutes of such municipality. (Code 1933, § 95A-832, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1991, p. 94, § 32.)

32-4-112. Contracts with state agencies and adjoining counties.

(a) A contract with a state agency is subject to those limitations of subparagraph (d)(1)(A) and paragraph (2) of subsection (d) of Code Section 32-2-61.

(b)(1) A municipality may contract with any county in which part of the municipality lies for the construction and maintenance of a public road within the limits of such municipality.

(2) In such contract, the county may agree to use any county funds available for the construction and maintenance of roads in such county, including funds derived from general obligation bonds issued after approval in a county-wide election, to pay the costs, in whole or in part, of the construction or maintenance of such public road.

(3) In such contract, the municipality may agree to use any funds available for the construction and maintenance of roads in such municipality, together with any funds the municipality may collect pursuant to its power to assess any part of its share of the cost of such contract against abutting and adjoining property and the owners thereof according to the provisions of Chapter 39 of Title 36, as if the municipality were performing the work alone, unless the terms of such assessment shall be in violation of the municipality's charter, an ordinance of the municipality, or a general law of the state.

(4) The work under such contract may be performed either by county or municipal forces or by a contractor employed by either or jointly. (Code 1933, § 95A-833, enacted by Ga. L. 1973, p. 947, § 1.)

OPINIONS OF THE ATTORNEY GENERAL

Contract for improvement of county road located in municipality. cooperation of a municipality in the right-of-way acquisition for, and construction and maintenance of, a county road
— County may, by contract, obtain the

located within the municipality, but the county cannot require this of a municipal- ity absent an appropriate contract. 1986 Op. Att’y Gen. No. U86-27.

32-4-113. Limitations on power to contract.

A municipality is prohibited from negotiating a contract except a contract:

- (1) Involving the expenditure of less than \$20,000.00;
- (2) With a state agency or political subdivision as authorized by Code Sections 32-4-111 and 32-4-112;
- (3) With a railroad or railway company or a publicly or privately owned utility as authorized by Article 6 of Chapter 6 of this title;
- (4) For engineering or other kinds of professional or specialized services;
- (5) For emergency maintenance requiring immediate repairs to a public road, including but not limited to bridge repairs, snow and ice removal, and repairs due to flood conditions; or
- (6) Otherwise expressly authorized by law. (Code 1933, § 95A-834, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1989, p. 356, § 3.)

RESEARCH REFERENCES

ALR. — Contract for personal services bids and condition of public contract, 15 as within requirement of submission of ALR3d 733.

32-4-114. Required letting of contracts by public bid.

Except as authorized by Code Section 32-4-113, all contracts shall be let by public bid. (Code 1933, § 95A-835, enacted by Ga. L. 1973, p. 947, § 1.)

RESEARCH REFERENCES

ALR. — Contract for personal services bids as condition of public contract, 15 as within requirement of submission of ALR3d 733.

32-4-115. Advertising for bids.

(a) Notwithstanding any provision of Code Section 36-39-10 to the contrary, on all contracts to be let by public bid a municipality shall advertise for competitive sealed bids for at least two weeks. The public advertisement shall be inserted once a week in such newspapers wherein the county sheriff’s sales are advertised or in such newspapers or other publications, or both, as will ensure adequate publicity, the first insertion to be at least two weeks prior to the opening of the sealed

bids, the second to follow one week after the publication of the first insertion.

(b) Such advertisement shall include but not be limited to the following:

- (1) A description sufficient to enable the public to know the approximate extent and character of the work to be done;
- (2) The time allowed for performance;
- (3) The terms and time of payment;
- (4) Where and under what conditions and costs the detailed plans and specifications and proposal forms may be obtained;
- (5) The amount of the proposal guaranty, if one is required;
- (6) The time and place for submission and opening of bids;
- (7) The right of the municipality to reject any one or all bids; and
- (8) Such further notice as the municipality may deem advisable as in the public interest. (Ga. L. 1922, p. 37, § 1a; Code 1933, § 95-1103; Code 1933, § 95A-836, enacted by Ga. L. 1973, p. 947, § 1.)

RESEARCH REFERENCES

ALR. — Right of public authorities to reject all bids for public work or contract, 52 ALR4th 186.

32-4-116. Payment by bidder to cover costs.

A municipality may require each bidder to pay a reasonable sum sufficient to cover the cost to the municipality, where applicable, of the bid proposal form, the contract, and its specifications. (Code 1933, § 95A-837, enacted by Ga. L. 1973, p. 947, § 1.)

32-4-117. Proposal guaranty by bidder.

(a) A municipality may require that each bid on a particular contract, as a prerequisite to the bid being considered, be accompanied by a proposal guaranty in the form of a certified check or other acceptable security payable to the municipality for an amount deemed by the municipality in the public interest necessary to ensure that the successful bidder will execute the contract on which he bid.

(b) Such proposal guaranty will be returned to a bidder upon receipt by the municipality of the bidder's written withdrawal of his bid if such receipt is before the time scheduled for the opening of bids. Upon the determination by the municipality of the lowest reliable bidder, the

municipality will return proposal guaranties to all bidders except the proposal guaranty of the lowest reliable bidder. If no contract award is made within 30 days after the date set for the opening of bids, all bids shall be rejected and all proposal guaranties shall be returned unless the municipality and the successful bidder agree in writing to a longer period of time. (Code 1933, § 95A-838, enacted by Ga. L. 1973, p. 947, § 1.)

RESEARCH REFERENCES

ALR. — Right of bidder for state or municipal contract to rescind bid on ground that bid was based upon his own mistake of fact or that of his employee, 2 ALR4th 991.

32-4-118. Award of contract to lowest reliable bidder; procedure upon rejection of bids.

Notwithstanding any provisions of Code Section 36-39-11 to the contrary, where a contract has been let for bid, the municipality, by resolution entered in its minutes, shall award the contract to the lowest reliable bidder, provided that the municipality shall have the right to reject any and all such bids whether such right is reserved in the public notice or not and, in such case, may readvertise, perform the work itself, or abandon the project. (Ga. L. 1922, p. 37, § 1c; Code 1933, § 95-1005; Code 1933, § 95A-839, enacted by Ga. L. 1973, p. 947, § 1.)

RESEARCH REFERENCES

ALR. — Public contracts: authority of state or its subdivision to reject all bids, 52 ALR4th 186. Encroachment of trees, shrubbery, or other vegetation across boundary line, 65 ALR4th 603.

Public contracts: low bidder's monetary relief against state or local agency for nonaward of contract, 65 ALR4th 93.

32-4-119. Bonds of successful bidder.

Notwithstanding any provision of Chapter 91 of Title 36 to the contrary, where the contract price is \$5,000.00 or more, no construction contract of a municipality, other than a contract solely for engineering or other professional services, shall be valid unless the contractor first gives:

(1) A performance and payment bond which meets the requirements of Parts 1, 3, and 4 of Article 3 of Chapter 91 of Title 36; and

(2) Such other bonds or insurance policies required by the municipality in its proposal forms, including but not limited to public liability and property damage insurance bonds or policies and bonds

to maintain in good condition such completed construction for a period of not less than five years. (Ga. L. 1922, p. 37, § 1b; Code 1933, § 95-1104; Code 1933, § 95A-840, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 2001, p. 820, § 8; Ga. L. 2007, p. 167, § 5/HB 192.)

32-4-120. Failure to take bonds; liability of municipality.

If the payment bond required by Code Section 32-4-119 is not taken, the municipality then shall be liable to subcontractors, laborers, materialmen, and other persons, as provided in Part 4 of Article 3 of Chapter 91 of Title 36, for losses to them resulting from failure to take such bond. (Code 1933, § 95A-841, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 2000, p. 498, § 15; Ga. L. 2001, p. 820, § 9.)

32-4-121. Failure of successful bidder to sign contract or furnish bonds.

If the successful bidder fails to sign the contract or furnish the bonds required under authority of Code Section 32-4-119, his proposal guaranty, if one had been required by the municipality, will become the property of the municipality as liquidated damages. The contract then may be readvertised, or the project may be abandoned. (Code 1933, § 95A-842, enacted by Ga. L. 1973, p. 947, § 1.)

RESEARCH REFERENCES

ALR. — Right of bidder for state or municipal contract to rescind bid on ground that bid was based upon his own mistake of fact or that of his employee, 2 ALR4th 991.

32-4-122. Oath by successful bidder.

A successful bidder, before commencing the work, shall execute a written oath, as required by subsection (e) of Code Section 36-91-22, stating that he has not violated such Code section which makes it unlawful to restrict competitive bidding. (Code 1933, § 95A-843, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 2001, p. 4, § 32.)

32-4-123. Other laws applicable to part.

Except as indicated to the contrary in this part, Chapter 91 of Title 36 shall not apply to this part. (Code 1933, § 95A-844, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 2000, p. 498, § 16; Ga. L. 2001, p. 820, § 10.)

CHAPTER 5

FUNDS FOR PUBLIC ROADS

Article 1		Sec.	
Federal Funds		32-5-23.	Limitations on expenditures from fund.
Sec.		32-5-24.	Authorization of expenditure for public roads serving planned communities.
32-5-1.	Receipt of funds by state; effect of inconsistency between chapter and requirements of United States Department of Transportation or other federal agencies.	32-5-25.	Use of fund in regard to acquisition of rights of way.
		32-5-26.	Reimbursement of counties and municipalities in regard to acquisition of rights of way.
32-5-2.	Appropriation of funds to department.	32-5-27.	Allocation formula development and implementation.
Article 2		Article 3	
State Public Transportation Fund		Allocation of Funds	
32-5-20.	"State Public Transportation Fund" defined.	32-5-30.	Allocation of state and federal funds; budgeting periods; authorization of reduction of funds allocated.
32-5-21.	Priority of expenditures from fund.	32-5-31.	Duty of board to submit yearly report; requirements of report.
32-5-22.	Other expenditures from fund.		

Editor's notes. — By resolution (Ga. L. 2007, p. 352), the General Assembly created the Joint Study Committee on Transportation Funding to undertake a study of the conditions, needs, issues, and problems with the funding of Georgia's transportation system. The Committee made a report to the General Assembly and was abolished on December 31, 2007.

ARTICLE 1

FEDERAL FUNDS

32-5-1. Receipt of funds by state; effect of inconsistency between chapter and requirements of United States Department of Transportation or other federal agencies.

(a) The state treasurer is designated a proper authority to receive any of the federal-aid funds apportioned by the federal government under 23 U.S.C. and to receive any other federal funds apportioned to the State of Georgia for public road and other public transportation purposes, unless designated otherwise by the federal government and except as such funds may be directed by the federal government to the State Road and Tollway Authority.

(b) If any provisions of this chapter are inconsistent with or contrary to any laws, rules, regulations, or other requirements of the United States Department of Transportation or other federal agencies, the Georgia Department of Transportation is authorized and empowered to waive such provisions of this chapter in order to resolve any such inconsistency or conflict, it being the purpose of this chapter to enable the department to comply with any requirement of the federal government in order to procure all possible federal aid and assistance for the construction or maintenance of the public roads of Georgia and other public transportation purposes. (Code 1933, § 95A-701, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1982, p. 3, § 32; Ga. L. 1991, p. 94, § 32; Ga. L. 1993, p. 1402, § 18; Ga. L. 1999, p. 112, § 1; Ga. L. 2001, p. 1251, § 1-4; Ga. L. 2010, p. 863, § 3/SB 296.)

The 2010 amendment, effective July 1, 2010, substituted “state treasurer” for “director of the Office of Treasury and Fiscal Services” near the beginning of subsection (a).

Law reviews. — For article, “Standards for Smart Growth: Searching for

Limits on Agency Discretion and the Georgia Regional Transportation Authority,” see 36 Georgia L. Rev. 247 (2001).

For note on 1999 amendment to this Code section, see 16 Ga. St. U.L. Rev. 233 (1999).

JUDICIAL DECISIONS

Cited in *Campbell v. State Rd. & Tollway Auth.*, 276 Ga. 714, 583 S.E.2d 32 (2003).

OPINIONS OF THE ATTORNEY GENERAL

No expenditure of money on historic preservation if not for transportation. — Department of Transportation may expend federal and state funds on transportation enhancement activities as defined in 23 U.S.C. § 101(a) in those instances when the Code of Public Transportation gives the department the authority to expend such funds, but the Department of Transportation has no au-

thority to expend federal or state money on historic preservation, rehabilitation, and operation of historic transportation buildings, structures, or facilities (including historic railroad facilities and canals) when such buildings, structures, or facilities are not being acquired for transportation purposes. 1993 Op. Att’y Gen. No. 93-3 (decided prior to 1993 amendment of O.C.G.A. § 32-1-3).

32-5-2. Appropriation of funds to department.

All federal funds received by the state treasurer under Code Section 32-5-1 are continually appropriated to the department for the purpose specified in the grants of such funds except as such funds may be directed by the federal government to the State Road and Tollway Authority, provided that no federal funds or funds appropriated to the department shall be expended for procurement of rights of way for a road to be constructed on a county road system except as otherwise

provided by law or by agreement between the federal government and the department. (Code 1933, § 95A-702, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1993, p. 1402, § 18; Ga. L. 2001, p. 1251, § 1-5; Ga. L. 2010, p. 863, § 3/SB 296.)

The 2010 amendment, effective July 1, 2010, substituted “state treasurer” for “director of the Office of Treasury and Fiscal Services” near the beginning.

JUDICIAL DECISIONS

Cited in *Campbell v. State Rd. & Tollway Auth.*, 276 Ga. 714, 583 S.E.2d 32 (2003).

ARTICLE 2

STATE PUBLIC TRANSPORTATION FUND

Administrative rules and regulations. — Grant programs, Official Compilation of the Rules and Regulations of the State of Georgia, State Department of Transportation, Chapter 672-12.

OPINIONS OF THE ATTORNEY GENERAL

Replacement of public facilities. — Department of Transportation may presently make payments to effectuate the federal purpose of functional replacement of publicly owned facilities; while the department may not pay for the functional replacement of improvements without considering the value of the improvement, the department may, in appropriate cases, make payments which reflect special values approximating the replacement costs of the improvement. 1973 Op. Att’y Gen. No. 73-186.

32-5-20. “State Public Transportation Fund” defined.

As used in this article, the term “State Public Transportation Fund” means that money the expenditures of which are controlled and supervised by the department by virtue of paragraph (2) of subsection (a) of Code Section 32-2-2. (Code 1933, § 95A-703, enacted by Ga. L. 1973, p. 947, § 1.)

Cross references. — Motor fuel and road taxes, T. 48, C. 9.

32-5-21. Priority of expenditures from fund.

Subject to the restrictions on expenditures imposed by Code Section 32-5-23, the State Public Transportation Fund shall be expended by the department in the following order:

(1) To pay the rentals on lease contracts entered into pursuant to the authority of the Constitution of Georgia;

(2) To pay into the State of Georgia Guaranteed Revenue Debt Common Reserve Fund the amount of the highest annual debt service requirements for an issue of guaranteed revenue debt for public road projects initiated pursuant to Code Section 32-10-67, upon its issuance, when the guarantee of the specific issue has been authorized by an appropriation of moneys governed by Article III, Section IX, Paragraph VI(b) of the Constitution and the appropriation meets the requirements for such debt as provided by Article VII, Section IV, Paragraph III(b) of the Constitution;

(3) To pay the costs of operating the department and for any emergencies or unusual situations;

(4) To pay the costs necessary to comply with the conditions of federal-aid apportionments to the state for the planning, surveying, constructing, paving, and improving of the public roads in Georgia;

(5) As directed from time to time by appropriations Acts; and

(6) After the requirements set out in the foregoing provisions of this Code section have been met, the remainder of the State Public Transportation Fund to be expended to pay the costs of maintaining, improving, constructing, and reconstructing the public roads of the state highway system, for maintaining roads within and leading to state parks, and for constructing public roads by department forces. (Code 1933, § 95A-704, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1982, p. 3, § 32; Ga. L. 1983, p. 3, § 56; Ga. L. 1991, p. 1355, § 2; Ga. L. 2009, p. 976, § 11/SB 200.)

RESEARCH REFERENCES

ALR. — Constitutionality of statutory provisions as to political corporations or divisions which shall bear cost of establishing or maintaining highways, 2 ALR 746; 123 ALR 1462.

32-5-22. Other expenditures from fund.

Expenditures from the State Public Transportation Fund may be made, under such conditions as the department may provide, for streets, driveways, and parking areas located upon the property of and serving:

- (1) Public schools;
- (2) Colleges of the university system;
- (3) State agencies and governments of political subdivisions; and
- (4) Hospitals constructed with the assistance of financial grants from the federal government, authorized by Title 42, Chapter 6A,

Subchapter IV, United States Code, as amended. (Code 1933, § 95A-705, enacted by Ga. L. 1973, p. 947, § 1.)

32-5-23. Limitations on expenditures from fund.

Notwithstanding Code Section 32-5-22 and except as expressly authorized elsewhere in this title, no funds from the State Public Transportation Fund shall be expended for the construction or maintenance of:

(1) Private driveways, roads, or bridges; or

(2) Public roads that have since been abandoned. (Code 1933, § 95A-706, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1982, p. 3, § 32.)

Cross references. — Abandonment of public roads, T. 32, C. 7.

32-5-24. Authorization of expenditure for public roads serving planned communities.

The Department of Transportation is authorized to expend funds appropriated or available to the department for the acquisition, construction, development, extension, enlargement, or improvement of public roads to serve planned communities which have been certified as eligible for state development assistance under Code Section 45-12-170. Such funds may come from appropriations of the General Assembly for such purpose or general obligation bonds may be issued for funds for such purpose. The department may require as a condition of such development assistance that provision be made for the purchase by the appropriate local government of such public roads or improvements for an amount up to the amount of such funds expended by the department for such public roads or improvements, plus accrued interest. The department and local governments may enter into agreements whereby such projects are leased to the appropriate local government, provided that such lease payments, exclusive of payments for maintenance costs, shall be included in the total amounts necessary to purchase such public roads or improvements. (Code 1933, § 95A-706.1, enacted by Ga. L. 1974, p. 1215, § 3; Ga. L. 1982, p. 3, § 32.)

32-5-25. Use of fund in regard to acquisition of rights of way.

Whenever property is acquired under subsection (e) of Code Section 32-3-3, all expenses of the acquisition thereof, including the purchase price and all direct and consequential damages awarded in any proceeding brought to condemn any such right of way, shall be paid by the county in which such right of way or portion thereof is situated. When

such right of way or portion thereof lies within the limits of a municipality, acquisition expenses shall be paid by such municipality unless the county concerned agrees to procure such right of way on behalf of the municipality. However, nothing contained in this Code section shall prevent the department from using the State Public Transportation Fund to acquire such right of way, to pay any damage awarded on account of the location of any road that is a part of the state highway system, or to assist a county or municipality in so doing. Furthermore, nothing in this Code section shall be construed to authorize an expenditure from the State Public Transportation Fund for the procurement of a right of way for a road to be constructed on a county road system or municipal street system except as otherwise provided by law or by agreement between the federal government and the department. (Code 1933, § 95-1721, enacted by Ga. L. 1935, p. 160, § 1; Code 1933, § 95A-707, enacted by Ga. L. 1973, p. 947, § 1.)

Cross references. — Acquisition of rights of way within municipalities for state highway system, § 32-4-90.

OPINIONS OF THE ATTORNEY GENERAL

No conflict of interest was created by a special assistant Attorney General representing the owner of property condemned by a county for road purposes. 1983 Op. Att'y Gen. No. U83-64.

RESEARCH REFERENCES

ALR. — Constitutionality of state legislation to reimburse public utilities for cost of relocating their facilities because of highway construction, conditioned upon federal reimbursement of the state under the terms of Federal-Aid Highway Act (23 U.S.C. § 123), 75 ALR2d 419.

32-5-26. Reimbursement of counties and municipalities in regard to acquisition of rights of way.

The department shall be required to reimburse any county or municipality of this state the sums actually expended by it in accordance with subsection (e) of Code Section 32-3-3 where construction on the right of way so acquired by the county or municipality has not been begun within ten years from the date title to such right of way was acquired in the name of the department. (Ga. L. 1947, p. 1186, § 1; Code 1933, § 95A-708, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1974, p. 1422, § 18.)

32-5-27. Allocation formula development and implementation.

(a) The Planning Division of the department and the director of planning shall develop an allocation formula for:

- (1) A state-wide transportation asset management program;
- (2) A state-wide transportation asset improvement program; and
- (3) A local maintenance and improvement grant program.

Funds from the State Public Transportation Fund shall be allocated by the department pursuant to such formula as further defined in subsections (b) through (d) of this Code section and as appropriated by the General Assembly. Every four years, concurrent with the renewal of the state-wide strategic transportation plan, the division and the director shall update the data used in the allocation formula and shall review the distributional components of the formula and at such time may amend the formula as necessary to support implementation of the plans provided for in Code Section 32-2-22.

(b) Funds appropriated for the state-wide transportation asset management program shall be allocated pursuant to the long-range state-wide strategic transportation plan and shall be available for administration, maintenance, operations, and rehabilitation of infrastructure.

(c)(1) Funds allocated for the state-wide transportation asset improvement program shall be allocated for capital construction projects, which may include new capacity, expansion of current infrastructure, safety improvements, or completion of, additions to, and capital improvement of state strategic corridors and economic development highways, including but not limited to those identified pursuant to Code Section 32-4-22. Recommendations for appropriation to the state-wide transportation asset improvement program shall include consideration of current and future regional population and regional employment. Local funding matches may be required.

(2) A portion of this allocation shall be a specific itemized and prioritized project list and such portion shall be not less than 10 percent nor more than 20 percent of the aggregate allocation from the State Public Transportation Fund, subject to and consistent with the provisions of the state-wide transportation improvement program, for such fiscal year. In developing such project list the division and the director may accept project recommendations from the Transportation Committees of the Senate and the House of Representatives, the Governor, metropolitan planning organizations, and nonmetropolitan areas. Such projects shall be prioritized in accordance with the state-wide strategic transportation plan. The division and the director shall submit such prioritized capital construction projects to the Governor for consideration in advance of the legislative session each year. The Governor shall submit all or a portion of such capital construction project requests as part of the Governor's budget recommendations to the General Assembly. The General

Assembly may appropriate funds to any project on the prioritized project list.

(3) In addition to the portion of the state-wide transportation asset improvement program subject to the 10 percent limitation in paragraph (2) of this subsection, additional funds from the State Public Transportation Fund may be allocated to the state-wide transportation asset improvement program that are not subject to specific project selection.

(d) Funds allocated for the local maintenance and improvement grant program shall replace funds formerly available under the local assistance road program and state-aid program and shall be allocated by the Local Grants Division of the department to local governing authorities as grants or otherwise according to a funding formula developed by the division and the director. Such formula shall include considerations of paved and unpaved lane miles and vehicle miles traveled and may include population, employment, and local funding matches available, as well as other factors as may be determined by the division and the director. Funds allocated each fiscal year for the local maintenance and improvement grant program shall be not less than 10 percent nor more than 20 percent of the money derived from motor fuel taxes received by the state in the immediately preceding fiscal year, less the amount of refunds, rebates, and collection costs authorized by law and shall be used only for the purposes available for the proceeds of such taxes. Grants of such funds shall include provisions requiring adherence to adequate roadway standards, accounting practices, and applicable transportation plans. Additional allocations to this program from other funding sources shall be allocated subject to the requirements for usage attached to such funds.

(e) Funds allocated or appropriated pursuant to the provisions of this Code section shall not be subject to redirection or reservation pursuant to Chapter 12 of Title 45 or to budgetary reduction except as provided by subparagraph (b) of Paragraph VI of Section IX of Article III of the Constitution.

(f) Information pertaining to all funds received and expended by, through, or from the department, including but not limited to project numbers, let dates, estimated costs, actual costs, estimated completion date, status, priority ranking, congressional, House, and Senate districts, vendor names, contract amounts, and other pertinent contract information, shall be published on the website of the department as data in structured format. As used in this subsection, 'structured format' means data that is presented in machine readable format. (Code 1981, § 32-5-27, enacted by Ga. L. 2009, p. 976, § 12/SB 200.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2009, a comma was deleted following “the division” in the last sentence of subsection (a).

ARTICLE 3

ALLOCATION OF FUNDS

32-5-30. Allocation of state and federal funds; budgeting periods; authorization of reduction of funds allocated.

(a)(1) The total of expenditures from the State Public Transportation Fund under paragraphs (4), (5), and (6) of Code Section 32-5-21 plus expenditures of federal funds appropriated to the department, not including any federal funds specifically designated for projects that have been earmarked by a member of Congress in excess of appropriated funds, shall be budgeted by the department over two successive budgeting periods every decade.

(2) The first budgeting period shall commence immediately following redistricting of congressional districts and shall be for a duration of five years. The second budgeting period shall continue until the beginning of the budgeting period following the next redistricting of congressional districts after each decennial census; provided, however, if the congressional districts have been redrawn prior to a new decennial census, but after the approval of an existing map based on the last decennial census, the budgeting period shall include two successive budgeting periods. The first budgeting period shall end upon approval of the new redistricting and the second budgeting period shall commence from the date such redrawn congressional districts have been approved and shall continue until the next budgeting period following the next redistricting of congressional districts. The department shall budget such expenditures such that at the end of such budgeting period funding obligations equivalent to at least 80 percent of such total for such budgeting period shall have been divided equally among the congressional districts in this state, as those districts existed at the commencement of such budgeting period, for public road and other public transportation purposes in such districts.

(b)(1) The board may upon approval by two-thirds of its membership authorize a reduction in the share of funds allocated pursuant to this Code section to any such congressional district if such supermajority of the board determines that such district does not have sufficient projects available for expenditure of funds within that district to avoid lapsing of appropriated funds.

(2) In the event that funding becomes available to the department which could not otherwise be allocated among congressional districts

due to the allocation requirements of this Code section, the board may upon approval by a majority of its membership authorize a waiver of such allocation requirements to the extent necessary to allow the expenditure of such funding, and any project, projects, or portion thereof undertaken with such additional funding shall be in addition to those projects funded in accordance with the allocation requirements of this Code section in the fiscal year in which the additional funds became available or any subsequent year; provided, however, that any such waiver shall be valid only for the fiscal year in which it is granted, and any funds budgeted pursuant to a waiver granted by this paragraph which were not obligated by the end of such fiscal year shall not be obligated in violation of the allocation requirements of this Code section in a subsequent fiscal year unless a majority of the board again authorizes a waiver of the allocation requirements in such subsequent fiscal year.

(c) Provisions of this Code section may be waived pursuant to subsection (b) of Code Section 32-5-1 only upon approval by two-thirds of the membership of the board. (Code 1981, § 32-5-30, enacted by Ga. L. 1999, p. 112, § 2; Ga. L. 2000, p. 1483, § 1; Ga. L. 2001, p. 4, § 32; Ga. L. 2002, p. 1490, § 1; Ga. L. 2005, p. 724, § 1/SB 4; Ga. L. 2006, p. 72, § 32/SB 465; Ga. L. 2009, p. 8, § 32/SB 46.)

Law reviews. — For article, “Standards for Smart Growth: Searching for Limits on Agency Discretion and the Georgia Regional Transportation Authority,” see 36 Ga. L. Rev. 247 (2001).

For note on 1999 enactment of this Code section, see 16 Ga. St. U.L. Rev. 233 (1999).

32-5-31. Duty of board to submit yearly report; requirements of report.

In each calendar year, the board shall provide to the Governor, Lieutenant Governor, and Speaker of the House of Representatives a written report detailing the allocation of funding obligations among congressional districts pursuant to Code Section 32-5-30 for the fiscal year ending June 30 of that same calendar year. Such report shall include without limitation the annual funding obligations and the projected expenditures of funds for the five-year period and any and all documents or information indicating how the department intends to allocate the applicable state and federal funds among congressional districts as required by Code Section 32-5-30 or a detailed explanation of why the department is unable to allocate such funds as required. (Code 1981, § 32-5-31, enacted by Ga. L. 1999, p. 112, § 2; Ga. L. 2000, p. 1483, § 1.)

Law reviews. — For article, “Standards for Smart Growth: Searching for Limits on Agency Discretion and the Georgia Regional Transportation Authority,” see 36 Ga. L. Rev. 247 (2001).

CHAPTER 6

REGULATION OF MAINTENANCE AND USE OF
PUBLIC ROADS GENERALLY

Article 1

General Provisions

Sec.		Sec.	
32-6-1.	Obstructing, encroaching on, or injuring public roads; leasing of property by department.	32-6-28.	Permits for excess weight and dimensions.
32-6-2.	Authority of department, counties, and municipalities to regulate parking; parking vehicles or leaving vehicles unattended on right of way of public road on state highway system.	32-6-29.	Responsibility of the Department of Transportation; responsibility of the Department of Public Safety.
32-6-3.	Deposit of driver's license with arresting officer in lieu of bail or incarceration; driver's failure to appear before proper judicial officer; applicability of Code section to foreign licenses [Repealed].	32-6-30.	Stopping vehicles for purposes of weighing, measuring, or inspecting; reports of violations; refusal to stop.
32-6-4.	Removal of natural or manmade obstructions, cargo, or personal property during state of emergency.	32-6-31.	Construction of Code Sections 32-1-10, 32-6-26, 32-6-27, and 32-6-29.
32-6-5.	Closure of or limiting access to roads due to inclement weather; exception for certain vehicle operators.		

Article 3

Control of Signs and Signals

PART 1

PUBLIC ROADS GENERALLY

32-6-50.	Uniform regulations governing erection and maintenance of traffic-control devices; placement, removal, defacement, damaging, or sale of devices.
32-6-51.	Erection, placement, or maintenance of unlawful or unauthorized structure; removal thereof; penalty for violation; authorization of placement, erection, and maintenance of commercial advertisements by transit agency.
32-6-52.	Displays of nudity or sexual conduct on outdoor advertising visible from roadway prohibited; penalty.

PART 2

STATE HIGHWAY SYSTEM

Article 2
Dimensions and Weight of Vehicles
and Loads

32-6-20.	General restrictions.	32-6-70.	Declaration of policy.
32-6-21.	Redesignated.	32-6-71.	Definitions.
32-6-22.	Height of vehicles and loads.	32-6-72.	Designation of outdoor advertising which may be erected or maintained within 660 feet of nearest edge of right of way.
32-6-23.	Width of vehicles and loads.		
32-6-24.	Length of vehicles and loads.		
32-6-25.	Exemptions for farming, agricultural, and forest management equipment.		
32-6-25.1.	Exemptions for port vehicles used to transport cargo or containers.		
32-6-26.	Weight of vehicle and load.		
32-6-27.	Enforcement of load limitations.		

- Sec.
32-6-73. Designation of outdoor advertising which may be erected or maintained beyond 660 feet of nearest edge of right of way.
- 32-6-74. Applications for permits generally; fees; renewals; transfer of permits.
- 32-6-75. Restrictions on outdoor advertising authorized by Code Sections 32-6-72 and 32-6-73; multiple message signs on interstate system, primary highways, and other highways.
- 32-6-75.1. Roadside Enhancement and Beautification Council; membership; purpose; compensation.
- 32-6-75.2. Roadside Enhancement and Beautification Fund; dedication of certain revenues.
- 32-6-75.3. Application for tree trimming permit and annual renewal; forms; application fees; evaluation; criteria for trimming trees or vegetation.
- 32-6-76. Restrictions on directional signs generally.
- 32-6-77. Exceptions to spacing limitations contained in Code Sections 32-6-75 and 32-6-76.
- 32-6-78. Restrictions on public service signs.
- 32-6-79. Permits for nonconforming signs; right of department to refuse to issue additional permits to persons maintaining illegal sign; appeal from department's decision.
- 32-6-80. Renewal of permits for nonconforming signs; transfer of permits for nonconforming signs.
- 32-6-81. Revocation or withholding of permits for illegal or unauthorized actions against the department's property.
- 32-6-82. Acquisition by department of property rights in outdoor advertising which does not comply with requirements of part.
- 32-6-83. Acquisition by municipal corporation or county of outdoor

- Sec.
advertising which does not comply with requirements of applicable ordinances, regulations, or resolutions.
- 32-6-84. Interests and losses which may be compensable under Code Sections 32-6-82 and 32-6-83.
- 32-6-85. Department's exercise of eminent domain power to acquire interests specified in Code Section 32-6-84.
- 32-6-86. Compensation contingent upon federal matching funds.
- 32-6-87. Agreements with United States Secretary of Transportation.
- 32-6-87.1. "RV friendly" markers.
- 32-6-88. Designation of defined areas.
- 32-6-89. Retention of directional signs, displays, and devices in defined areas.
- 32-6-90. Promulgation of rules and regulations by department.
- 32-6-91. Erection or maintenance of sign without permit as constituting misdemeanor.
- 32-6-92. Maintenance of unauthorized sign as constituting misdemeanor.
- 32-6-93. Erection or maintenance of sign without a permit as constituting a public nuisance; enjoining erection or maintenance of such sign.
- 32-6-94. Maintenance of unauthorized sign as constituting a public nuisance; enjoining maintenance of such sign.
- 32-6-95. Applicability of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," to part generally; affirmance of agency decision by operation of law.
- 32-6-96. Authority of department to enter upon private lands to implement administrative decisions; reimbursement of department for expenses; return or disposition of stored sign remnants.
- 32-6-97. Construction of part.

Article 4**Limited-access Roads**

- Sec.
- 32-6-110. "Local service road" defined.
- 32-6-111. Establishment and maintenance of limited-access roads.
- 32-6-112. Acquisition of property and property rights.
- 32-6-113. Design of limited-access roads.
- 32-6-114. Designation of limited-access roads; elimination of intersections at grade.
- 32-6-115. Conducting commercial enterprises or activities on property on which limited-access roads have been constructed.
- 32-6-116. Installation and operation of vending machines in safety rest areas on rights of way of state highway system.
- 32-6-117. Lease of air rights.
- 32-6-118. Establishment, maintenance, and disposal of local service roads.
- 32-6-119. Effect of article on Coastal Highway District and Coastal Scenic Highway Authority.

Article 5**Commercial Property and Subdivisions****PART 1****COMMERCIAL PROPERTY**

- 32-6-130. "Commercial driveway" defined.
- 32-6-131. Permit requirement as to construction or improvement of commercial driveways; authority of department to close driveways for violations.
- 32-6-132. Change or substitution of existing commercial driveways.
- 32-6-133. Promulgation of regulations; charges for permits for commercial driveways.
- 32-6-134. Procedure by department upon discovery of violation of Code Section 32-6-131; liability for expenses incurred in connection with changes

Sec.

- 32-6-135. made in commercial driveways.
- Effect of part on authority of counties and municipalities to regulate highways, roads, and streets.
- PART 2**
- SUBDIVISIONS**
- 32-6-150. "Subdivision" defined.
- 32-6-151. Department recommendation as to approval or rejection of plat submitted by planning commission.
- 32-6-152. Department approval or rejection of plat submitted by proprietor of subdivision.
- 32-6-153. Factors to be considered by department in making recommendations to planning commissions and in approving or rejecting plats.
- 32-6-154. Effect of part on requirement as to commercial driveway permit.

Article 6**Public Utilities****PART 1****IN GENERAL**

- 32-6-170. Payment by Department of Transportation of costs of removal, relocation and adjustment of utility facilities necessitated by construction of public roads.
- 32-6-171. Authority of department to order removal, relocation, or adjustment of utility facilities; giving notice to utility; relocation procedures; procedure by department upon failure of utility to remove facility; damages; mediation.
- 32-6-172. Authority of department to obtain replacement right of way for relocated utility.
- 32-6-173. Payment of expenses of removal and relocation of utility facilities.
- 32-6-174. Promulgation of regulations by department.

- Sec.
32-6-175. Right to injunctive relief.
- PART 2
- RAILROADS
- 32-6-190. Duty to maintain grade crossings.
- 32-6-191. Responsibility for construction of new grade crossings and relocation of existing grade crossings.
- 32-6-192. Construction of underpass or overpass in lieu of grade crossing; procedure; costs; maintenance.
- 32-6-193. Authority of department, counties, and municipalities to eliminate grade crossings.
- 32-6-193.1. Elimination of grade crossings by physical removal; procedures.
- 32-6-194. Procedure for grade crossing elimination.
- 32-6-195. Division of costs of grade crossing elimination projects.
- 32-6-196. Temporary use of railroad rights of way during construction or maintenance of grade separation structures or grade crossing or protective devices.
- 32-6-197. Responsibility for maintenance of overpasses and underpasses.
- 32-6-198. Agreements as to grade crossing elimination.
- 32-6-199. Improvement of existing underpass or overpass.
- 32-6-200. Installation of protective devices at grade crossings.

- Sec.
32-6-201. Regulation of traffic when necessary to perform maintenance.
- 32-6-202. Procedure to obtain maintenance of grade separation structures, protective devices, and grade crossings.
- 32-6-203. Judicial review.

Article 7

Transportation of Hazardous Materials

32-6-220 through 32-6-225 [Repealed].

Article 8

Control of Junkyards

- 32-6-240. Definitions.
- 32-6-241. Restrictions on location of junkyards in relation to location of rights of way of interstate or federal-aid primary highways.
- 32-6-242. Screening junkyards in existence on April 6, 1967.
- 32-6-243. Promulgation by department of regulations governing the screening and fencing of junkyards.
- 32-6-244. Authority of commissioner or local officials to acquire land and remove junkyards.
- 32-6-245. Agreements with United States Secretary of Transportation.
- 32-6-246. Abatement of nuisances.
- 32-6-247. Penalty.
- 32-6-248. Construction of article.

Cross references. — Access to and use of public facilities by physically handicapped persons, T. 30, C. 3. Penalty for operating unlicensed or unregistered vehicles on public highways, § 40-2-8. Uni-

form rules of the road, T. 40, C. 6. Procedure for passing stationary authorized emergency vehicles, stationary towing or recovery vehicles, or stationary highway maintenance vehicles, § 40-6-16.

RESEARCH REFERENCES

ALR. — Liability, in motor vehicle-related cases, of governmental entity for injury, death, or property damage

resulting from defect or obstruction in shoulder of street or highway, 19 ALR4th 532.

Liability of governmental entity for damage to motor vehicle or injury to person riding therein resulting from collision between vehicle and domestic animal at large in street or highway, 52 ALR4th 1200.

Highway contractor's liability to highway user for highway surface defects, 62 ALR4th 1067.

Governmental tort liability for detour accidents, 1 ALR5th 163.

ARTICLE 1

GENERAL PROVISIONS

32-6-1. Obstructing, encroaching on, or injuring public roads; leasing of property by department.

(a) It shall be unlawful for any person to obstruct, encroach upon, solicit the sale of any merchandise on, or injure materially any part of any public road. For purposes of this Code section, the term "obstruct" shall include without limitation the causing of any buildup of rock, gravel, mud, dirt, chemicals, or other materials by continued ingress or egress of vehicles or of any natural waters dammed or redirected by diversion to an extent which presents a hazard to the traveling public.

(b) Any person who unlawfully obstructs, encroaches upon, or injures said public road shall be responsible for reimbursing the Department of Transportation or the applicable local governing authority in the case of a road which is part of a county road system or municipal street system for the costs of removal of said obstructions or encroachments and the costs of repairs to the public road incurred by such department or local governing authority, including any costs associated with traffic management; provided, however, that such costs shall be limited to those costs which are directly incurred from such damages. Costs incurred for traffic management may include, but not be limited to, costs incurred for flagging, signing, or provision of detours, provided that these activities are directly caused by the obstruction, encroachment, or injury to the public road system. The court may, in addition to any other sentence authorized by law, order a person convicted of violating this Code section to make such restitution for the offense.

(c) Nothing in this Code section shall abridge or limit any authority provided by law for the installation and operation of vending machines at welcome centers, tourist centers, and safety rest areas. Nothing in this Code section shall limit in any way the department's authority to lease property to state or federal agencies, counties, or municipalities as provided for in Code Section 32-7-5, or limit the Department of Transportation's ability to grant a license to any utility or railroad corporation as defined in Code Section 46-1-1. (Code 1933, § 95A-903, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1979, p. 132, § 4; Ga. L. 1988, p. 1431, § 1; Ga. L. 1993, p. 315, § 1; Ga. L. 2002, p. 1126, § 4.)

Cross references. — Further provisions regarding obstruction of public roads, § 16-11-43. Prohibition against interference with public roads and streets by mass picketing near site of labor dispute, § 34-6-5.

Law reviews. — For article, "Recommendations Regarding Control of Outdoor Advertising Along the Interstate Highway System in Georgia," see 14 Mercer L. Rev. 308 (1963).

JUDICIAL DECISIONS

Section's applicability to structures on private property. — O.C.G.A. § 32-6-1 does not apply to structures which are on private property adjacent to public roads. *Smith v. Hiawassee Hdwe. Co.*, 167 Ga. App. 70, 305 S.E.2d 805 (1983).

Applicability to operation of and parking vehicles. — O.C.G.A. § 32-6-1 does not in any way regulate vehicles used upon state highways, and therefore does not authorize the conviction of a person for obstructing and encroaching upon a public road resulting from operating and parking vehicles. *Cartwright v. State*, 197 Ga. App. 868, 399 S.E.2d 736 (1990).

O.C.G.A. § 32-6-1 does not apply to improperly parked tractor-trailer, which is a parked vehicle rather than a structure. *Southern Intermodal Logistics, Inc. v. Coleman*, 175 Ga. App. 853, 334 S.E.2d 888 (1985).

Department can require removal of obstructions. — Management and control of the right of way of the state's system of roads is vested in the Department of Transportation, and the department can require the removal of any obstruction placed thereon without express permission. *Crider v. Kelley*, 232 Ga. 616, 208 S.E.2d 444 (1974).

Bridge partially blocking traffic lights. — Railroad's bridge, which partially blocked traffic lights at a nearby intersection, did not infringe on the public right-of-way, when the space provided by the bridge for the public right-of-way adequately allowed for the safe and unimpeded flow of traffic thereunder and the traffic lights were not part of the bridge's structure. *City of Fairburn v. Cook*, 188 Ga. App. 58, 372 S.E.2d 245, cert. denied, 188 Ga. App. 911, 372 S.E.2d 245 (1988).

OPINIONS OF THE ATTORNEY GENERAL

Authority to issue license for rail line. — Department of Transportation has authority to issue a revocable license to a company constructing and operating a rapid rail passenger service line to cross

the rights-of-way of several state routes so long as consideration is received which represents a substantial benefit to the public. 1995 Op. Att'y Gen. No. 95-45.

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Highways, Streets, and Bridges, § 31.

C.J.S. — 40 C.J.S., Highways, §§ 246, 249 et seq.

ALR. — Constitutionality of statute or ordinance imposing upon abutting owners or occupants duty in respect of care or condition of street or highway, 58 ALR 215.

Municipality's power to permit private owner to construct building or structure

overhanging or crossing the air space above public street or sidewalk, 76 ALR2d 896.

Relative rights and liabilities of abutting owners and public authorities in parkways in center of street, 81 ALR2d 1436.

Liability of private landowner for vegetation obscuring view at highway or street intersection, 69 ALR4th 1092.

32-6-2. Authority of department, counties, and municipalities to regulate parking; parking vehicles or leaving vehicles unattended on right of way of public road on state highway system.

Notwithstanding Code Section 40-6-200 and Code Sections 40-6-202 through 40-6-204:

(1) The department may regulate and prohibit the parking of any type of vehicle on any public road on the state highway system, including extensions thereof into or through municipalities. Whenever any state or local law enforcement officer finds a vehicle parked in violation of law or the department's regulations, such officer or employee is authorized to move such vehicle or require the driver or other person in charge of the vehicle to move the same. If the vehicle is unattended, such officer is authorized to remove or provide for the removal of such vehicle to the nearest garage or other place of safety at the owner's expense. State or local law enforcement officers and the department are further authorized, with or without the consent of the owner, to remove or have removed any obstruction, cargo, or personal property which is abandoned, unattended, or damaged as a result of a vehicle accident which the department determines to be a threat to public health or safety or to mitigate traffic congestion, and any person or towing service that is removing an obstruction, cargo, or personal property at the location of such obstruction, cargo, or personal property upon instruction by a law enforcement officer, an official of a fire department acting under the authority of paragraph (1) of Code Section 25-3-1 or paragraph (3) of Code Section 25-3-2, or an official of the department shall be liable only for gross negligence;

(2) A county may regulate and control the parking of vehicles on the county road system and to this end the county may place parking meters on or immediately adjacent to any or all such roads, except extensions into a municipality, for the purpose of authorizing timed parking in designated spaces upon the payment of a charge for such privilege. A county may also place such parking meters on or adjacent to any public road on the state highway system located within the county and outside the corporate limits of a municipality when authorized by the department pursuant to paragraph (1) of this Code section;

(3) A municipality may regulate and control the parking of vehicles on its municipal street system and on extensions of a county road system within its corporate limits and to this end may place parking meters on or immediately adjacent to any or all of such roads for the purpose of authorizing timed parking in designated spaces upon the payment of a charge for such privilege. A municipality also may place

such parking meters on or adjacent to any public road on the state highway system located within the corporate limits of the municipality when authorized by the department pursuant to paragraph (1) of this Code section; and

(4) It shall be unlawful for any person to park or leave unattended any vehicle upon the right of way of any public road on the state highway system for over 48 hours. (Code 1933, § 95A-904, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1982, p. 3, § 32; Ga. L. 1985, p. 149, § 32; Ga. L. 1993, p. 370, § 1; Ga. L. 2000, p. 951, § 2-3; Ga. L. 2005, p. 334, § 12-1/HB 501; Ga. L. 2007, p. 170, § 1/HB 231.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2006, “county road” was substituted for “count yroad” in paragraph (3).

Law reviews. — For article, “Recom-

mendations Regarding Control of Outdoor Advertising Along the Interstate Highway System in Georgia,” see 14 Mercer L. Rev. 308 (1963).

JUDICIAL DECISIONS

Cited in Old Republic Union Ins. Co. v. Floyd Beasley & Sons, 250 Ga. App. 673, 551 S.E.2d 388 (2001).

OPINIONS OF THE ATTORNEY GENERAL

Removal of unattended vehicles by law enforcement officers. — Any vehicle left unattended for more than 48 hours on the right of way of a public road within the State Highway System may be removed by state or local law enforcement officers. 1973 Op. Att’y Gen. No. 73-165.

Municipal regulation of streets in State Highway System. — Municipality may not, by ordinance, seek to regulate streets which are a part of the State Highway System, unless the municipality

is attempting to place parking meters on or adjacent to a road which is a part of the State Highway System, and has been first authorized by the department to place the parking meters; or the municipality is attempting to erect or maintain a traffic-control device on a road which is a part of the State Highway System, and written approval has first been obtained from the department. 1974 Op. Att’y Gen. No. U74-94.

RESEARCH REFERENCES

ALR. — Validity of restrictions as to points at which jitney bus passengers may be taken on and discharged, 6 ALR 110.

32-6-3. Deposit of driver’s license with arresting officer in lieu of bail or incarceration; driver’s failure to appear before proper judicial officer; applicability of Code section to foreign licenses.

Reserved. Repealed by Ga. L. 1999, p. 81, § 32, effective April 5, 1999.

Editor's notes. — This Code section present provisions, see Code Section was based on Code 1933, § 95A-1101, 17-6-11. enacted by Ga. L. 1978, p. 1989, § 4. For

32-6-4. Removal of natural or manmade obstructions, cargo, or personal property during state of emergency.

State or local law enforcement officers, including fire department officials, and the department are authorized, upon the issuance of an executive order by the Governor declaring a state of emergency, with or without the consent of the owner, to remove or have removed any natural or manmade obstruction, cargo, or other personal property which is abandoned, unattended, or damaged and the law enforcement officer or the department determines such object to be a threat to public health or safety or to be contributing to traffic congestion. Any person, contractor, towing service, or other entity that is removing an obstruction, cargo, or other personal property pursuant to the instruction of a law enforcement officer, an official of a fire department acting under the authority of paragraph (1) of Code Section 25-3-1 or paragraph (3) of Code Section 25-3-2, or the department, and under the provisions of this Code section, shall be liable for damage or harm at the location where the obstruction, cargo, or other personal property was left abandoned or unattended, only when the person, contractor, towing service, or other entity was grossly negligent in the performance of his or her assigned duties; provided, however, nothing in this Code section shall limit liability for any damage or harm caused at a location different from the location where the obstruction, cargo, or other personal property was left abandoned or unattended. (Code 1981, § 32-6-4, enacted by Ga. L. 2011, p. 583, § 8/HB 137.)

Effective date. — This Code section became effective July 1, 2011.

32-6-5. Closure of or limiting access to roads due to inclement weather; exception for certain vehicle operators.

(a) The department may close or limit access to any portion of road on the state highway system due to inclement weather that results in dangerous driving conditions. There shall be erected or posted signage of adequate size indicating that a portion of the state highway system has been closed or access has been limited. When the department determines a road shall have limited access due to inclement winter weather conditions, notice shall be given to motorists through posted signage that motor vehicles must be equipped with tire chains, four-wheel drive with adequate tires for existing conditions, or snow tires with a manufacturer's all weather rating in order to proceed. Such signage shall inform motorists that it shall be unlawful to proceed on

such road without such equipment. With the exception of buses, operators of commercial vehicles with four or more drive wheels traveling on a road declared as limited access due to inclement winter weather conditions shall affix tire chains to at least four of the drive wheel tires. Bus operators shall affix tire chains to at least two of the drive wheel tires before proceeding on a road with limited access due to inclement winter weather conditions. For purposes of this Code section, the term "tire chains" means metal chains which consist of two circular metal loops, positioned on each side of a tire, connected by not less than nine evenly spaced chains across the tire tread or any other traction devices capable of providing traction equal to or exceeding that of such metal chains under similar conditions.

(b) This Code section shall not apply to a tow operator towing a motor vehicle or traveling to a site from which a motor vehicle shall be towed or to emergency responders traveling the roadway in order to fulfill their duties. (Code 1981, § 32-6-5, enacted by Ga. L. 2012, p. 1343, § 6/HB 817.)

Effective date. — This Code section became effective July 1, 2012.

ARTICLE 2

DIMENSIONS AND WEIGHT OF VEHICLES AND LOADS

Cross references. — Powers and duties of state fire marshal with regard to sale and storage of liquified petroleum gas, § 10-1-260 et seq. Authority of Commissioner of Agriculture to stop and inspect commercial vehicles pursuant to enforcement of weights and measures law, § 10-2-6. Required equipment for motor vehicles generally, T. 40, C. 8. Georgia Forest Product Trucking Rules, § 46-1-1.

Administrative rules and regulations. — Overweight assessment citation, Official Compilation of the Rules and Reg-

ulations of the State of Georgia, Department of Driver Services, Administration, Chapter 375-1-3.

Permits for vehicles or loads of excess weight or dimension, Official Compilation of the Rules and Regulations of the State of Georgia, State Department of Transportation, Chapter 672-2.

Motor carrier compliance, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Public Safety, Chapter 570-31.

32-6-20. General restrictions.

No vehicle or load shall be operated or moved upon the public roads of Georgia if a dimension or the weight of such vehicle or load exceeds the limitations specified in Code Sections 32-6-22 through 32-6-24 or in Code Section 32-6-26 unless exempted in Code Section 32-6-25 or authorized to do so by a permit issued pursuant to Code Section 32-6-28. (Ga. L. 1927, p. 226, § 15; Code 1933, § 68-401; Code 1933, § 95A-953, enacted by Ga. L. 1973, p. 947, § 1.)

JUDICIAL DECISIONS

Cited in *Wiles v. State*, 161 Ga. App. 473, 288 S.E.2d 271 (1982).

OPINIONS OF THE ATTORNEY GENERAL

Twin trailer vehicle subject to general weight and dimension limitations. — While there is no express prohibition against the operation of twin trailers in Georgia, such a vehicle is subject to the weight and dimension limitations placed upon all vehicles by the General Assembly. 1980 Op. Att'y Gen. No. 80-9.

When Department of Transportation officers may selectively stop vehicles. — Department of Transportation enforcement officers may not selectively stop vehicles unless the officers have an articulate and reasonable suspicion that the operator is violating, or the vehicle is in violation of, the law. 1987 Op. Att'y Gen. No. U87-31.

RESEARCH REFERENCES

ALR. — Validity and applicability of statutes relating to use of highway by private motor carriers and contract motor carriers for hire, 175 ALR 1333.

Power to limit weight of vehicle or its load with respect to use of streets or highways, 75 ALR2d 376.

Automobiles: construction and operation of statutes or regulations restricting the weight of motor vehicles or their loads, 45 ALR3d 503.

32-6-21. Redesignated.

Reserved. Redesignated as Code Section 40-6-248.1 by Ga. L. 2006, p. 275, § 3-9/HB 1320, effective July 1, 2006.

Editor's notes. — Ga. L. 2006, p. 275, § 3-9/HB 1320, redesignated former Code Section 32-6-21 as present Code Section 40-6-248.1.

Ga. L. 2006, p. 275, § 4-1/HB 1320 reserved the designation of this Code section.

32-6-22. Height of vehicles and loads.

(a) Except as authorized in subsection (b) of this Code section and except when so authorized by a permit issued pursuant to Code Section 32-6-28, no vehicle unladen or with a load shall exceed a height of 13 feet, six inches.

(b) On highways which constitute a part of The Dwight D. Eisenhower System of Interstate and Defense Highways as such term is used in 23 U.S.C. Section 127 and ramps or service streets which provide reasonable access thereto, no vehicle transporting motor vehicles (commonly known as automobile carriers) unladen or with a load shall exceed a height of 14 feet. (Ga. L. 1927, p. 226, § 15; Code 1933, § 68-401; Ga. L. 1941, p. 449, § 1; Ga. L. 1956, p. 83, § 2; Ga. L. 1959,

p. 27, § 1; Ga. L. 1964, p. 83, § 1; Ga. L. 1968, p. 30, § 1; Code 1933, § 95A-956, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1996, p. 1010, § 1; Ga. L. 2000, p. 136, § 32.)

OPINIONS OF THE ATTORNEY GENERAL

Traffic regulation. — This section qualifies as a statute relating to traffic upon the public roads, streets, and high-

ways, violation of which is punishable as a misdemeanor offense. 1979 Op. Att’y Gen. No. U79-14 (see O.C.G.A. § 32-6-22).

RESEARCH REFERENCES

ALR. — Violation of regulation governing size or weight of motor vehicles, or combinations of vehicles and loads, on the

highway as basis of liability for personal injury, death, or damage to private property, 21 ALR3d 989.

32-6-23. Width of vehicles and loads.

Unless otherwise provided in this Code section or exempted in Code Section 32-6-25 or so authorized by a permit issued pursuant to Code Section 32-6-28, no vehicle shall exceed a total outside width, including any load thereon, of 102 inches, exclusive of mirrors and accessories attached thereto, when operated on any street, road, or highway. (Ga. L. 1927, p. 226, § 15; Code 1933, § 68-401; Ga. L. 1941, p. 449, § 1; Ga. L. 1951, p. 772, § 1; Ga. L. 1956, p. 83, § 2; Ga. L. 1959, p. 27, § 1; Ga. L. 1964, p. 83, § 1; Ga. L. 1968, p. 30, § 1; Code 1933, § 95A-957, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1979, p. 439, § 1; Ga. L. 1983, p. 1798, § 1; Ga. L. 1984, p. 22, § 32; Ga. L. 1984, p. 621, § 1; Ga. L. 1999, p. 567, § 1.)

OPINIONS OF THE ATTORNEY GENERAL

Promotion of safety and protection of public investment. — O.C.G.A. §§ 32-1-10, 32-6-23, 32-6-24, 46-7-61 (now repealed) and 46-7-78 (now repealed) are intended to promote the safety of the traveling public and protect the public’s investment in the public’s roads and highways. 1981 Op. Att’y Gen. No. U81-17.

Traffic regulation. — This section qualifies as a statute relating to traffic upon the public roads, streets, and highways, violation of which is punishable as a misdemeanor offense. 1979 Op. Att’y Gen. No. U79-14 (see O.C.G.A. § 32-6-23).

RESEARCH REFERENCES

ALR. — Validity and applicability of statutes relating to use of highway by private motor carriers and contract motor carriers for hire, 175 ALR 1333.

Liability for injury or damage caused by collision with portion of load projecting

beyond rear or side of motor vehicle or trailer, 21 ALR3d 371.

Violation of regulation governing size or weight of motor vehicles, or combinations of vehicles and loads, on the highway as basis of liability for personal injury, death,

or damage to private property, 21 ALR3d 989.

32-6-24. Length of vehicles and loads.

(a) As used in this article, the term:

(1) "Bimodal semitrailer" means a detachable load-carrying unit designed to be attached to a coupling on the rear of a truck tractor by which it is partly supported during movement over the highway and designed either with retractable flanged wheels or to attach to a detachable flanged wheel assembly for movement on the rails.

(2) "Combination of vehicles" means a semitrailer pulled by a truck tractor or a semitrailer and trailer pulled by a truck tractor operating in a truck tractor-semitrailer-trailer combination.

(3) "Extendable semitrailer" means a semitrailer that has been manufactured for the purpose of extending the frame to increase the overall length for the purpose of transporting single-piece loads.

(4) "NHS" means the National Highway System.

(5) "Semitrailer" means a detachable load-carrying unit designed to be attached to a coupling on the rear of a truck tractor by which it is partly supported.

(6) "Trailer" means a detachable load-carrying unit designed to be attached to a coupling at the rear of a semitrailer and capable of support in operation without the truck tractor.

(7) "Truck tractor" means the noncargo-carrying power unit that operates in combination with a semitrailer or trailer, except that a truck tractor and semitrailer engaged in the transportation of automobiles may transport motor vehicles on part of the power unit.

(b) Unless exempted in Code Section 32-6-25 or so authorized by a permit issued pursuant to Code Section 32-6-28, the following length limits shall apply:

(1) Trailer and semitrailer lengths:

(A) Truck tractor-semitrailer-trailer combinations shall have trailers and semitrailers that do not exceed 28 feet in length;

(B) Truck tractor-semitrailer combinations shall have semitrailers that do not exceed 53 feet in length, unless signs are posted that indicate semitrailer length restrictions;

(C) On interstate and NHS routes, single-piece loads may be transported on an extendable semitrailer that exceeds 53 feet, provided that no pieces will be loaded end to end and the semi-

trailer does not exceed 75 feet in length; on roads other than the interstate and NHS routes, the foregoing provisions of this subparagraph shall also apply, except that the overall length shall not exceed 100 feet. Empty extendable semitrailers or extendable semitrailers transporting a single-piece load of 53 feet or less shall be required to maintain a semitrailer length of 53 feet or less. When the semitrailer is extended as described in this subparagraph, the rear extremity of each extendable semitrailer or load shall be marked with a four-inch multidirectional amber strobe light and with 18 inch bright red or orange warning flags on the rearmost of the load or semitrailer;

(D) Maxi-cube combinations shall have a cargo box that does not exceed 34 feet, provided that the pair of cargo boxes together does not exceed 60 feet and the overall length, including the power unit, does not exceed 65 feet; and

(E) Trailer and semitrailer length requirements in this paragraph shall not apply to automobile and boat transporters; however, no unit of the vehicle shall exceed 56 feet in length; and

(2) Overall truck tractor-semitrailer or truck tractor-semitrailer-trailer lengths:

(A) Maxi-cube combinations shall have an overall length that does not exceed 65 feet;

(B) Saddlemount and saddlemount with fullmount combinations shall have an overall length that does not exceed 97 feet; and

(C) All other combinations of truck tractor-semitrailer or truck tractor-semitrailer-trailer operated on roads other than interstate or the NHS shall have an overall length that does not exceed 100 feet, unless signs are posted that indicate length restrictions. This maximum length shall include the federal allowance for automobile and boat transporter loads to overhang up to three feet over the front of the vehicle and overhang up to four feet over the rear of the vehicle. (Ga. L. 1927, p. 226, § 15; Code 1933, § 68-401; Ga. L. 1956, p. 83, § 2; Ga. L. 1959, p. 27, § 1; Ga. L. 1964, p. 83, § 1; Ga. L. 1968, p. 30, § 1; Code 1933, § 95A-958, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1974, p. 1422, §§ 35, 36; Ga. L. 1979, p. 439, § 2; Ga. L. 1980, p. 576, §§ 1-3; Ga. L. 1981, p. 133, § 1; Ga. L. 1983, p. 1798, § 2; Ga. L. 1985, p. 1002, § 1; Ga. L. 1987, p. 414, § 1; Ga. L. 1987, p. 1030, § 1; Ga. L. 1989, p. 1569, § 1; Ga. L. 1989, p. 693, § 1; Ga. L. 1990, p. 255, § 1; Ga. L. 1991, p. 94, § 32; Ga. L. 1992, p. 2467, § 1; Ga. L. 1993, p. 786, § 1; Ga. L. 1995, p. 990, § 1; Ga. L. 1996, p. 1010, § 2; Ga. L. 1999, p. 567, § 2; Ga. L. 1999, p. 828, § 1; Ga. L. 2000, p. 136, § 32; Ga. L. 2000, p. 1654, § 1; Ga. L. 2001, p. 4, § 32; Ga. L. 2010, p. 442, § 1/HB 1174.)

The 2010 amendment, effective July 1, 2010, added paragraph (a)(4); redesignated former paragraph (a)(4) as present paragraph (a)(5); deleted former paragraph (a)(5), which read: "STAA system" means the National Network and the Access Routes to the National Network as allowed under the federal Surface Transportation Assistance Act (STAA), as amended."; in subparagraph (b)(1)(C), substituted "NHS" for "STAA system" twice and substituted "18 inch" for "12 inch" in the last sentence; and, in para-

graph (b)(2), substituted "97 feet" for "75 feet" at the end of subparagraph (b)(2)(B), and substituted "NHS" for "STAA system of roads" in the first sentence of subparagraph (b)(2)(C).

Cross references. — Light, flag, or strobe lamp on projecting load, § 40-8-27.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1988, "term" was substituted for "terms" at the end of the introductory language of subsection (a).

JUDICIAL DECISIONS

Delegation of authority constitutional. — Delegation of authority to the Department of Transportation to determine which of the thousands of miles of state highways are suitable for the types of truck traffic governed by the statute is not unconstitutional. *State v. Moore*, 259 Ga. 139, 376 S.E.2d 877 (1989).

Enforcement of different limits violates equal protection clause. — En-

forcement of total length limits — i.e., combination of vehicle and load — for general freight transport that are different from those total length limits enforced as to live poultry transport violates the equal protection clause of the Georgia Constitution. *State v. Moore*, 259 Ga. 139, 376 S.E.2d 877 (1989).

Cited in *Seabolt v. State*, 174 Ga. App. 572, 330 S.E.2d 789 (1985).

OPINIONS OF THE ATTORNEY GENERAL

Preemption. — 49 U.S.C. § 2311, which establishes certain minimum vehicle lengths, without reference to loads, did not preempt O.C.G.A. § 32-6-24 with regard to load lengths of automobile transporters on federally assisted highways. 1985 Op. Att'y Gen. No. U85-1.

Promotion of safety and protection of public investment. — O.C.G.A. §§ 32-1-10, 32-6-23, 32-6-24, 46-7-61 (now repealed) and 46-7-78 (now repealed) are

intended to promote the safety of the traveling public and protect the public's investment in the public's roads and highways. 1981 Op. Att'y Gen. No. U81-17.

Traffic regulation. — This section qualifies as a statute relating to traffic upon the public roads, streets, and highways, violation of which is punishable as a misdemeanor offense. 1979 Op. Att'y Gen. No. U79-14 (see O.C.G.A. § 32-6-24).

RESEARCH REFERENCES

ALR. — Validity, construction, and application of statutes or other regulations affecting the moving of buildings on highways, 83 ALR2d 464.

Violation of regulation governing size or

weight of motor vehicles, or combinations of vehicles and loads, on the highway as basis of liability for personal injury, death, or damage to private property, 21 ALR3d 989.

32-6-25. Exemptions for farming, agricultural, and forest management equipment.

The limitations of Code Section 32-6-23 as to width and of Code Section 32-6-24 as to length shall not apply to the following loads and

vehicles, which may exceed such limitation without a permit: farming or agricultural equipment or forest management equipment, whether self-propelled or being hauled, when such vehicle or equipment is being operated during daylight hours upon a public road not part of The Dwight D. Eisenhower System of Interstate and Defense Highways by dealers or by the owner thereof or his agent within a radius of 40 miles of the property of the dealer or owner. The foregoing exemptions do not apply to vehicles hauling or transporting forest products. (Ga. L. 1965, p. 206, § 1; Ga. L. 1968, p. 30, § 1; Code 1933, § 95A-954, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1974, p. 532, § 1; Ga. L. 2000, p. 136, § 32.)

32-6-25.1. Exemptions for port vehicles used to transport cargo or containers.

The limitations of Code Section 32-6-23 as to width and of Code Section 32-6-24 as to length shall not apply to the following loads and vehicles, which may exceed such limitation without a permit: Any vehicle or equipment used for transporting cargo or containers between and within wharves, storage areas, or terminals within the facilities of any port under the jurisdiction of the Georgia Ports Authority when such vehicle or equipment is being operated upon any public road not part of The Dwight D. Eisenhower System of Interstate and Defense Highways by the owner thereof or his or her agent within a radius of ten miles of the port facility of origin and accompanied by an escort vehicle equipped with one or more operating amber flashing lights that are visible from a distance of 500 feet. (Code 1981, § 32-6-25.1, enacted by Ga. L. 1999, p. 784, § 2; Ga. L. 2000, p. 136, § 32.)

32-6-26. Weight of vehicle and load.

(a) As used in this Code section, the term:

(1) “Federal bridge formula” means:

$$W = 500 \left(\frac{LN}{N-1} + 12N + 36 \right)$$

Where W = the overall gross weight on any group of two or more consecutive axles to the nearest 500 pounds, L = the distance in feet between the extreme of any group of two or more consecutive axles, and N = the number of axles in the group under consideration.

(2) “Lift axle” means any axle on any vehicle manufactured after July 1, 1978, which axle may be raised or lowered with respect to the horizontal plane of the vehicle.

(3) "Single axle" means all the wheels whose centers may be included between two parallel transverse vertical planes 40 inches apart.

(4) "State bridge formula" means:

$$W = 500 \left(\frac{LN}{N-1} + 12N + 36 \right)$$

Where W = the maximum allowable gross weight of the vehicle or combination of vehicles to the nearest 500 pounds, L = the distance in feet between the first and last axles of the vehicle or combination of vehicles, and N = the number of axles on the vehicle or combination of vehicles.

(5) "Tandem axle" means two or more consecutive axles, excluding the steering axle, which extend across the full width of the vehicle and whose centers may be included between parallel vertical planes spaced more than 40 inches apart but not more than 216 inches apart.

(b) Except when authorized by a permit issued pursuant to Code Section 32-6-28 and except as otherwise provided in this Code section:

(1) No vehicle equipped with high pressure pneumatic, solid rubber, or cushion tires and operated upon any public road of this state shall carry a load on any wheel which exceeds 8,000 pounds by more than 13 percent or a load on any single axle which exceeds 16,000 pounds by more than 13 percent; and

(2) No vehicle equipped with low pressure pneumatic tires and operated upon any public road of this state shall carry a load on any wheel which exceeds 9,000 pounds by more than 13 percent or a load on any single axle which exceeds 18,000 pounds by more than 13 percent.

(c)(1)(A) On all highways within this state which are not interstate highways, the maximum total gross weight authorized for any vehicle and load shall not exceed 80,000 pounds; the maximum load authorized on any single axle shall be as provided in subsection (b) of this Code section; the maximum load on any tandem axle shall be 40,680 pounds; and subject to subparagraph (B) and subparagraph (C) of this paragraph, the maximum total gross weight authorized for any vehicle and load shall be the maximum load authorized on any single axle multiplied by the number of axles with which the vehicle is equipped.

(B) For vehicles and loads with an actual total gross weight between 73,280 pounds and 80,000 pounds, the maximum total

gross weight authorized for the vehicle and load shall be determined by applying the state bridge formula.

(C) For any vehicle equipped with four axles, the maximum total gross weight authorized for the vehicle and load shall be 70,000 pounds.

(2) Reserved.

(3) No lift axle may be used in computing the maximum total gross weight authorized for any vehicle or load.

(d)(1)(A) On all highways within this state which are interstate highways, the maximum total gross weight authorized for any vehicle and load shall not exceed 80,000 pounds; the maximum load authorized on any single axle shall be as provided in subsection (b) of this Code section; and, except as provided in subparagraph (B) of this paragraph, the maximum overall gross weight in pounds on a group of two or more consecutive axles shall be determined by applying the federal bridge formula. In applying the formula, no lift axle shall be counted as an individual or additional axle when determining the maximum overall gross weight.

(B) Notwithstanding the provisions of subparagraph (A) of this paragraph, the maximum load authorized on any tandem axle shall be 34,000 pounds, and any two consecutive sets of tandem axles may carry a gross load of 34,000 pounds each if the overall distance between the first and last axles of such consecutive sets of tandem axles is 36 feet or more; however, except for vehicles and combinations of vehicles exceeding 55 feet in length, the maximum gross weight authorized on a tandem axle for a vehicle or combination of vehicles carrying a gross weight of less than 73,280 pounds shall be 40,680 pounds.

(2) If at any time federal law authorizes any weight greater than that authorized by this subsection, such greater weight under federal law shall be authorized on the interstate highways within this state.

(e) Subject to the provisions of this article, the department shall be authorized, on behalf of the state, to enter into agreements with the United States Secretary of Transportation as provided in Section 127 of Title 23 of the United States Code, relating to the control of vehicle weight and width limitations, which agreements shall exempt certain vehicles from the requirements of subsection (d) of this Code section. The department shall be authorized to take action in the name of the state to comply with the terms of any such agreement and to promulgate any rules and regulations necessary to ensure the department's compliance with federal laws and to provide for the issuance of the special permits required by this Code section.

(f) On any public road of a county road system, the maximum total gross weight of a vehicle and load shall not exceed 56,000 pounds unless the vehicle is making a pickup or delivery on such road; except that if a county road is constructed to the same standards as those highways of this state which are interstate highways and is authorized as a designated local truck route pursuant to official resolution of the county, the maximum weight limits for such designated local truck route shall be the same as those for highways in this state which are not interstate highways as provided by paragraph (1) of subsection (c) of this Code section. The county shall notify the department of any roads designated by the county as a local truck route within 90 days of such designation.

(g)(1) The weight limitations provided for in this Code section, except the limitation in subsections (f) and (h) of this Code section, may be exceeded on any public road within this state which is not an interstate highway, or when making a pickup or delivery on any public road of a county road system, without a permit only when the load on any single axle does not exceed 23,000 pounds, the load on any tandem axle does not exceed 46,000 pounds, and the maximum total gross weight of the vehicle and load does not exceed 80,000 pounds when:

(A) Hauling forest products from the forest where cut to the first point of marketing or processing;

(B) Hauling live poultry or cotton from a farm to a processing plant;

(C) Hauling feed from a feed mill to a farm;

(D) Hauling granite, either block or sawed, or any other naturally occurring raw ore or mineral for further processing, from the quarry or stockpile area to a processing plant located in the same or an adjoining county and construction aggregates hauled to any point, unless otherwise prohibited;

(E) Hauling solid waste or recovered materials from points of generation to a solid waste handling facility or other processing facility;

(F) Hauling concrete that is in a freshly mixed and unhardened state for delivery to a customer; or

(G) Hauling poultry waste from the point of origin to a farm.

No lift axle may be used in computing the maximum total gross weight authorized for any vehicle or load under this paragraph.

(2) A vehicle which is hauling the products listed in subparagraphs (A) through (F) of paragraph (1) of this subsection or which is hauling any other agricultural or farm product from a farm to the first point

of marketing or processing shall be permitted a 5 percent variance from the weight limitations in paragraph (1) of this subsection within a 100 mile radius of the farm or point of origin. Any person who violates the load limitations provided for in this paragraph by exceeding the 5 percent variance per single axle, tandem axle, or maximum total gross weight shall be fined on the basis of the weight limitations of paragraph (1) of this subsection, including the variance allowed by this paragraph.

(3) A vehicle which is hauling the products listed in subparagraph (G) of paragraph (1) of this subsection shall be permitted a 5 percent variance from the weight limitations in paragraph (1) of this subsection within a 250 mile radius of the farm or point of origin. Any person who violates the load limitations provided for in this paragraph by exceeding the 5 percent variance per single axle, tandem axle, or maximum total gross weight shall be fined on the basis of the weight limitations of paragraph (1) of this subsection and not on the basis of the variance allowed by this paragraph.

(4) Any vehicle carrying a load as authorized in this subsection at night shall be equipped with lights clearly visible for a distance of not less than 300 feet from the front and rear of the vehicle.

(h) Notwithstanding any provision of this Code section to the contrary, no vehicle or combination of vehicles shall be operated over any bridge with a posted limit which is less than the total gross weight of the vehicle and its load.

(i)(1) Any vehicle which can be made to comply with the requirements of this Code section by shifting the load and which is then loaded to comply with this Code section shall not be held to be in violation of this Code section.

(2) On all highways within this state which are not interstate highways:

(A) Except as provided in subparagraph (B) of this paragraph, for all vehicles, fines for violations of the total gross weight limitations provided for in subsection (c) of this Code section shall be based on the amount by which the actual weight of the vehicle and load exceeds the allowable maximum weight determined under subsection (c) of this Code section.

(B) For vehicles equipped with four axles, fines for violations of the total gross weight limitations provided for in subsection (c) of this Code section shall be based on the amount by which the actual weight of the vehicle and load exceeds 70,000 pounds.

(j) Except as provided in subsections (f) and (h) of this Code section, weight limits and axle definitions for any bimodal semitrailer, semi-

trailers, and trailers operated on highways and public roads within this state shall be weight limits and axle definitions authorized by federal law governing interstate highways. (Ga. L. 1927, p. 226, § 16; Ga. L. 1931, Ex. Sess., p. 114, § 2; Code 1933, §§ 68-402, 68-702; Ga. L. 1941, p. 449, §§ 1-3; Ga. L. 1955, p. 392, §§ 1, 2; Ga. L. 1956, p. 83, § 2; Ga. L. 1964, p. 83, § 1; Ga. L. 1968, p. 30, §§ 1, 2; Code 1933, § 95A-959, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1974, p. 1111, § 1; Ga. L. 1975, p. 68, § 1; Ga. L. 1978, p. 1965, § 1; Ga. L. 1978, p. 1989, § 1; Ga. L. 1980, p. 576, § 4; Ga. L. 1983, p. 3, § 23; Ga. L. 1983, p. 1798, §§ 3, 4; Ga. L. 1984, p. 621, § 2; Ga. L. 1987, p. 414, § 2; Ga. L. 1989, p. 693, §§ 2, 3; Ga. L. 1995, p. 862, § 1; Ga. L. 1996, p. 1512, §§ 2, 3; Ga. L. 1998, p. 1206, § 3; Ga. L. 2000, p. 136, § 32; Ga. L. 2002, p. 1484, § 1; Ga. L. 2004, p. 366, § 22; Ga. L. 2005, p. 601, § 2/SB 160; Ga. L. 2005, p. 822, § 1/HB 279; Ga. L. 2006, p. 72, § 32/SB 465; Ga. L. 2006, p. 292, § 1/HB 1106; Ga. L. 2007, p. 237, § 1/HB 536; Ga. L. 2008, p. 155, § 1/HB 981; Ga. L. 2011, p. 548, § 1/SB 54; Ga. L. 2012, p. 775, § 32/HB 942; Ga. L. 2012, p. 1343, § 7/HB 817.)

The 2011 amendment, effective July 1, 2011, deleted “or” from the end of subparagraph (g)(1)(E); substituted “; or” for a period at the end of subparagraph (g)(1)(F); added subparagraph (g)(1)(G); substituted “subparagraph (A) through (F)” for “subparagraph (A) or (B)” in the first sentence of paragraph (g)(2); and, in the first sentence of paragraph (g)(3), substituted “subparagraph (G)” for “subparagraph (C), (D), or (F)” and substituted “250 mile radius” for “100 mile radius” near the end.

The 2012 amendments. — The first

2012 amendment, effective May 1, 2012, part of an Act to revise, modernize, and correct the Code, revised language in paragraph (g)(2). The second 2012 amendment, effective July 1, 2012, in subsection (f), deleted “and approval of the commissioner” following “resolution of the county” near the middle of the first sentence and added the second sentence.

Cross references. — Posting of bridge weight limit on county road, § 32-4-41. Posting of bridge weight limit on municipal street, § 32-4-91. Designated local truck route signs, § 32-6-50.

JUDICIAL DECISIONS

Conclusive presumption of road damage by overweight vehicles is constitutional. — The conclusive presumption under O.C.G.A. § 32-6-27 of damage to the public roads caused by overweight vehicles does not deprive the person accused of violating O.C.G.A. § 32-6-26 of any constitutional right. *DOT v. Del-Cook Timber Co.*, 248 Ga. 734, 285 S.E.2d 913 (1982).

It is constitutionally permissible for the state to enact a statute providing that any person who operates an overweight motor vehicle on the public roads shall be conclusively presumed to have damaged the roads, and requiring such person to recompense the state for such damage in

accordance with a schedule pegging the amount of the damages to the poundage of excess weight. *DOT v. Del-Cook Timber Co.*, 248 Ga. 734, 285 S.E.2d 913 (1982).

Section’s failure to differentiate between timber and other freight haulers. — Failure of O.C.G.A. § 32-6-26 to differentiate between timber haulers and other freight haulers does not render statute unconstitutional. *DOT v. Del-Cook Timber Co.*, 248 Ga. 734, 285 S.E.2d 913 (1982) (decided prior to 1984 amendment).

Limited application exception not unconstitutional. — When a limited exemption to highway weight requirements was granted for certain industries which could not take advantage of other statu-

tory exceptions, there was no arbitrary decision violative of equal protection of those industries which were not granted the same limited exemptions since overall gross weights and axle load requirements still had to be met and the exemptions applied to short hauls on state roads. Department of Transp. v. Georgia Mining Ass'n, 252 Ga. 128, 311 S.E.2d 443 (1984).

"Tag axle," which permits the amount of weight borne by the axle to be adjusted by the driver from inside the truck through the manipulation of a switch which causes an air bag located between the axle and the frame of the trailer to inflate or deflate, is not a "lift axle" within the contemplation of paragraph (c)(3) of O.C.G.A. § 32-6-26. Anchor Motor Freight, Inc. v. Department of Transp., 199 Ga. App. 108, 404 S.E.2d 148, cert. denied, 199 Ga. App. 905, 404 S.E.2d 148 (1991).

Constitutional right to jury trial in administrative proceedings. — There is no constitutional right to a jury trial in administrative proceedings when a driver is issued with an overweight citation. DOT v. Del-Cook Timber Co., 248 Ga. 734, 285 S.E.2d 913 (1982).

Person assessed can prosecute action for judicial review in superior court. — Person issued an overweight vehicle assessment does have at least the statutory right to prosecute the action for judicial review of the administrative decision in the superior court of the county of his or her residence. DOT v. Del-Cook Timber Co., 248 Ga. 734, 285 S.E.2d 913 (1982).

Cited in Firestone Tire & Rubber Co. v. Hall, 152 Ga. App. 560, 263 S.E.2d 449 (1979).

OPINIONS OF THE ATTORNEY GENERAL

Municipalities are authorized to regulate weight of vehicles using municipal streets as long as such regulations are reasonable and do not violate general maximum weight limits contained in O.C.G.A. § 32-6-26. 1982 Op. Att'y Gen. No. 82-20.

Equalization of load must be by physically shifting load. — O.C.G.A.

§ 32-6-26 does not allow equalization by changing the position of the truck's "sliding tandem" or by changing the fifth wheel setting. Subsection (i) of O.C.G.A. § 32-6-26 requires the truck driver to physically shift the load so as to bring the load into compliance with Georgia's truck weight laws. 1992 Op. Att'y Gen. No. U92-21.

RESEARCH REFERENCES

ALR. — Power to limit weight of vehicle or its load with respect to use of streets or highways, 75 ALR2d 376.

Violation of regulation governing size or weight of motor vehicles, or combinations of vehicles and loads, on the highway as basis of liability for personal injury, death,

or damage to private property, 21 ALR3d 989.

Automobiles: construction and operation of statutes or regulations restricting the weight of motor vehicles or their loads, 45 ALR3d 503.

32-6-27. Enforcement of load limitations.

(a) Any person who violates the load limitation provisions of Code Section 32-6-26 shall be conclusively presumed to have damaged the public roads, including bridges, of this state by reason of such overloading and shall recompense the state for such damage in accordance with the following schedule:

(1) Five cents per pound for all excess weight over the allowed weight limitations, including any applicable variances;

(2) For the following vehicles, damages for excess weight shall be assessed at 125 percent times the rate imposed on offending vehicles operating without a permit:

(A) Where a vehicle is authorized to exceed the weight limitations of Code Section 32-6-26 by a permit issued pursuant to Code Section 32-6-28, the term "excess weight" means that weight which exceeds the weight allowed by such permit; and

(B) Where a vehicle is authorized to exceed the weight limitations of Code Section 32-6-26 by a permit issued pursuant to Code Section 32-6-28 as a superload permit or superload plus permit, the term "excess weight" means:

(i) Any single axle weight which exceeds any single axle weight allowed by such permit; and

(ii) All weight greater than 150,000 pounds when the gross weight of the vehicle and load exceeds the gross weight allowed by such permit or when any axle spacing is less than that specified by such permit; or

(3) Any vehicle that utilizes idle reduction technology shall have any penalty for violating Code Section 32-6-26, except for subsections (f) and (h), calculated by reducing from the actual gross weight, single axle weight, tandem axle weight, or the allowed weight on any group of two or more axles the manufacturer's certified weight of the idle reducing technology or 400 pounds, whichever is less. The operator of the vehicle shall present written certification from the manufacturer specifying the weight of the idle reducing technology and demonstrate that the idle reducing technology is fully functional at all times when so requested by any law enforcement officer or employee of the Department of Public Safety.

(a.1)(1)(A) The Department of Public Safety is authorized to issue a citation to the owner or operator of any vehicle in violation of a maximum weight limit on a county road which is a designated local truck route under subsection (f) of Code Section 32-6-26 and for which signs have been placed and maintained as required under paragraph (2) of subsection (c) of Code Section 32-6-50.

(B) The Department of Public Safety is authorized to issue a warning to the owner or operator of any vehicle in violation of a maximum weight limit on a county road which is a designated local truck route under subsection (f) of Code Section 32-6-26 but for which signs have not been placed or maintained as required under paragraph (2) of subsection (c) of Code Section 32-6-50 upon the

first such violation and to issue a citation to such owner or operator for a subsequent such violation.

(2)(A) The Department of Public Safety is authorized to issue a citation to the owner or operator of any vehicle in violation of a maximum weight limit on a bridge for which signs have been placed and maintained as required under paragraph (3) of Code Section 32-4-41 or subsection (a.1) of Code Section 32-4-91.

(B) The Department of Public Safety is authorized to issue a warning to the owner or operator of any vehicle in violation of a maximum weight limit on a bridge but for which signs have not been placed or maintained as required under paragraph (3) of Code Section 32-4-41 or subsection (a.1) of Code Section 32-4-91 upon the first such violation and to issue a citation to such owner or operator for a subsequent such violation.

(b) The schedules listed in paragraphs (1) and (2) of subsection (a) of this Code section shall apply separately to:

(1) The excess weight of the gross load; and

(2) The sum of the excess weight or weights of any axle or axles; provided, however, that where both gross load and axle weight limits are exceeded, the owner or operator shall be required to recompense the state only for the largest of the money damages imposed under paragraphs (1) and (2) of this subsection.

(c)(1) Within 30 days after the issuance of the citation, the owner or operator of any offending vehicle shall pay the amount of the assessment to the Department of Public Safety or request an administrative determination of the amount and validity of the assessment.

(2) The right to an administrative determination of the amount and validity of the assessment shall be granted only to the owner or operator of an offending vehicle.

(3) The party requesting an administrative determination of the amount and validity of the assessment shall deposit the amount of the assessment with the Department of Public Safety, within the time permitted to request such determination, before the determination will be granted. In the event the assessment is determined to be erroneous, the Department of Public Safety shall make prompt refund of any overpayment after receipt of a final decision making such determination.

(4) If an administrative hearing is requested, it shall be held in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," and the rules and regulations of the Department of

Public Safety. The scope of any such hearing shall be limited to a determination of:

- (A) The weight of the offending vehicle;
- (B) The maximum weight allowed by law on the roadway upon which the offending vehicle was operated; and
- (C) Whether the operator had in his or her actual possession a valid oversize or overweight permit issued by the Department of Transportation allowing the vehicle to operate in excess of the maximum weight otherwise allowed by law on the roadway upon which the offending vehicle was operated.

(5) Any person who has exhausted all administrative remedies available within the Department of Public Safety and who is aggrieved by a final order of the Department of Public Safety is entitled to judicial review in accordance with Chapter 13 of Title 50.

(6) If a party requests an administrative determination of the amount and validity of the assessment and fails to appear without first obtaining permission from the administrative law judge or does not withdraw the request in writing no less than five days in advance of a scheduled hearing, the party shall be deemed in default and the citation shall be affirmed by operation of law. The party shall be deemed to owe the sum of \$75.00 in addition to the amount due on the citation, which sum shall represent hearing costs.

(d) All moneys collected in accordance with this Code section shall be disposed of as follows:

(1) All moneys collected for violations of the weight limitations imposed by this article shall be remitted to the general fund of the state treasury;

(2) All moneys collected for violations of the height, width, or length limitations imposed by this article, after the appropriate statutory deductions, shall be retained by the governing authority of the county wherein the violation occurred for deposit in the general treasury of said county;

(3) Hearing costs imposed pursuant to paragraph (6) of subsection (c) of this Code section shall be retained by the Department of Public Safety;

(4) Reissuance fees imposed pursuant to paragraph (4) of subsection (g) of this Code section shall be retained by the Department of Revenue; and

(5) Restoration fees imposed pursuant to paragraph (1) of subsection (i) of this Code section shall be retained by the Department of Revenue.

(e) Any owner or operator of a vehicle which is operated on the public roads of this state in violation of the weight limitations provided in this article shall be required, in addition to paying the moneys provided in subsection (a) of this Code section, to unload all gross weight in excess of 6,000 pounds over the legal weight limit at the closest reasonable location.

(f) Any person authorized by law to enforce this article may seize the offending vehicle of an owner who fails or whose operator fails to pay the moneys prescribed in subsection (a) of this Code section and hold such vehicle until the prescribed moneys are paid. If the offending vehicle is not registered in this state, any person authorized by law to enforce this article may seize any vehicle owned or operated by an owner who fails or whose operator fails to pay the moneys prescribed in subsection (a) of this Code section and hold such vehicle until the prescribed moneys are paid. Any person seizing a vehicle under this subsection or subsection (e) of this Code section may, when necessary, store the vehicle; and the owner thereof shall be responsible for all reasonable storage charges thereon. When any vehicle is seized, held, unloaded, or partially unloaded under these subsections, the load or any part thereof shall be removed or cared for by the owner or operator of the vehicle without any liability on the part of the authorized person or of the state or any political subdivision because of damage to or loss of such load or any part thereof.

(g)(1) Whenever any person, firm, or corporation violates this article and becomes indebted to the Department of Public Safety because of such violations and fails within 30 days of the date of issuance of the overweight assessment citation either to pay the assessment or appeal to the Department of Public Safety for administrative review, as provided for in subsection (c) of this Code section, such assessment shall become a lien upon the overweight motor vehicle so found to be in violation, which lien shall be superior to all liens except liens for taxes or perfected security interests established before the debt to the Department of Public Safety was created.

(2) Whenever any person, firm, or corporation requests an administrative review, it shall be held in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." In the event that the administrative law judge finds in favor of the Department of Public Safety, the person, firm, or corporation shall pay the assessment within 30 days after that decision becomes final or, if judicial review is had in accordance with Chapter 13 of Title 50, then within 30 days after final judicial review is terminated. If the person, firm, or corporation fails to pay the assessment within 30 days, such assessment shall become a lien as provided for under paragraph (1) of this subsection.

(3) The Department of Public Safety shall perfect the lien created under this subsection by sending notice thereof on a notice designated by the commissioner of public safety, by first-class mail or by statutory overnight delivery, to the owner and all holders of liens and security interests shown on the records of the Department of Revenue maintained pursuant to Chapter 3 of Title 40. Upon receipt of notice from the Department of Public Safety, the holder of the certificate of title shall surrender same to the state revenue commissioner for issuance of a replacement certificate of title bearing the lien of the department unless the assessment is paid within 30 days of the receipt of notice. The Department of Revenue may append the lien to its records, notwithstanding the failure of the holder of the certificate of title to surrender said certificate as required by this paragraph.

(4) Upon issuance of a title bearing the lien of the Department of Public Safety, or the appending of the lien to the records of the Department of Revenue, the owner of the vehicle or the holder of any security interest or lien shown in the records of the Department of Revenue may satisfy such lien by payment of the amount of the assessment, including hearing costs, if any, and payment of a reissuance fee of \$100.00. Upon receipt of such amount, the Department of Public Safety shall release its lien and the Department of Revenue shall issue a new title without the lien.

(h)(1) The Department of Public Safety, in seeking to foreclose its lien on the motor vehicle arising out of an overweight motor vehicle citation assessed under this article, may seek an immediate writ of possession from the court before whom the petition is filed, if the petition contains a statement of facts, under oath, by the Department of Public Safety, its agents, its officers, or attorney setting forth the basis of the petitioner's claim and sufficient grounds for issuance of an immediate writ of possession.

(2) The Department of Public Safety shall allege under oath specific facts sufficient to show that it is within the power of the defendant to conceal, encumber, convert, convey, or remove from the jurisdiction of the court the property which is the subject matter of the petition.

(3) The court before whom the petition is pending shall issue a writ for immediate possession, upon finding that the petitioner has complied with paragraphs (1) and (2) of this subsection. If the petitioner is found not to have made sufficient showing to obtain an immediate writ of possession, the court may, nevertheless, treat the petition as one being filed under Code Section 44-14-231 and proceed accordingly.

(4) When an immediate writ of possession has been granted, the Department of Public Safety shall proceed against the defendant in

the same manner as provided for in Code Sections 44-14-265 through 44-14-269.

(i)(1) Whenever any person, firm, or corporation violates this article and fails within 30 days of the date of issuance of the overweight assessment citation either to pay the assessment or appeal to the Department of Public Safety for an administrative review as provided for under Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," the Department of Revenue may act to suspend the motor vehicle registration of the vehicle involved. However, if the person, firm, or corporation requests an administrative review, the Department of Revenue shall act to suspend the registration only after the issuance of a final decision favorable to the Department of Public Safety and the requisite failure of the person, firm, or corporation to pay the assessment. Upon such failure to pay the assessment, the Department of Revenue shall send a letter to the owner of such motor vehicle notifying the owner of the suspension of the motor vehicle registration issued to the motor vehicle involved in the overweight assessment citation. Upon complying with this subsection by paying the overdue assessment and upon submitting proof of compliance and paying a \$10.00 restoration fee to the Department of Revenue, the state revenue commissioner shall reinstate any motor vehicle registration suspended under this subsection. In cases where the motor vehicle registration has been suspended under this subsection for a second or subsequent time during any two-year period, the Department of Revenue shall suspend the motor vehicle registration for a period of 60 days and thereafter until the owner submits proof of compliance with this subsection and pays the \$150.00 restoration fee to the Department of Revenue.

(2) Unless otherwise provided for in this Code section, notice of the effective date of the suspension of a motor vehicle registration occurs when the owner has actual knowledge or legal notice thereof, whichever first occurs. For the purposes of making any determination relating to the restoration of a suspended motor vehicle registration, no period of suspension shall be deemed to have begun until ten days after the mailing of the notice required in paragraph (1) of this subsection.

(3) For the purposes of this subsection, except where otherwise provided, the mailing of a notice to a person at the name and address shown in records of the Department of Revenue maintained under Chapter 3 of Title 40 shall, with respect to the holders of liens and security interests, be presumptive evidence that such person received the required notice.

(4) For the purposes of this subsection, except where otherwise provided, the mailing of a notice to a person or firm at the name and

address shown on the overweight assessment citation shall, with respect to owners and operators of vehicles involved in an overweight assessment, be presumptive evidence that such person received the required notice.

(5) The state revenue commissioner may suspend the motor vehicle registration of any offending vehicle for which payment of an overweight assessment is made by a check that is returned for any reason.

(6) For the purposes of this subsection, where any provisions require the Department of Public Safety or the Department of Revenue to give notice to a person, which notice affects such person's motor vehicle license plate, the mailing of such notice and the name and address shown on the notice of overdue assessment citation supplied by the Department of Public Safety, as required by this subsection, shall be presumptive evidence that such person received the required notice. (Ga. L. 1956, p. 83, § 3; Code 1933, § 95A-960, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1974, p. 1422, § 37; Ga. L. 1978, p. 1989, § 2; Ga. L. 1981, p. 998, § 1; Ga. L. 1982, p. 3, § 32; Ga. L. 1983, p. 3, § 23; Ga. L. 1985, p. 149, § 32; Ga. L. 1992, p. 1236, § 2; Ga. L. 1998, p. 1206, § 4; Ga. L. 2000, p. 951, §§ 2-4, 2-5; Ga. L. 2002, p. 415, § 32; Ga. L. 2003, p. 450, § 1; Ga. L. 2005, p. 334, § 12-2/HB 501; Ga. L. 2005, p. 822, § 2/HB 279; Ga. L. 2006, p. 72, § 32/SB 465; Ga. L. 2007, p. 237, § 2/HB 536; Ga. L. 2010, p. 442, § 2/HB 1174; Ga. L. 2011, p. 548, § 2/SB 54.)

The 2010 amendment, effective July 1, 2010, rewrote subsection (a).

The 2011 amendment, effective July 1, 2011, substituted "over the legal weight limit at the closest reasonable location" for "over the legal weight limit before being allowed to move the vehicle" at the end of subsection (e).

Administrative rules and regulations. — Overweight assessment citation, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Driver Services, Administration, Chapter 375-1-3.

JUDICIAL DECISIONS

Conclusive presumption of road damage by overweight vehicles is constitutional. — Conclusive presumption of damage to the public roads caused by overweight vehicles pursuant to O.C.G.A. § 32-6-27 does not deprive the person accused of violating O.C.G.A. § 32-6-26 of any constitutional right. DOT v. Del-Cook Timber Co., 248 Ga. 734, 285 S.E.2d 913 (1982).

It is constitutionally permissible for the state to enact a statute providing that any person who operates an overweight motor

vehicle on the public roads shall be conclusively presumed to have damaged the roads, and requiring such person to recompense the state for such damage in accordance with a schedule pegging the amount of the damages to the poundage of excess weight. DOT v. Del-Cook Timber Co., 248 Ga. 734, 285 S.E.2d 913 (1982).

No opportunity to prove damages. There is certainly no constitutional requirement that the person accused of operating an overweight vehicle be given an opportunity to avoid the penalty or fine by

proving that no perceptible damage to the roads in fact occurred in the driver's case. DOT v. Del-Cook Timber Co., 248 Ga. 734, 285 S.E.2d 913 (1982).

Cited in Department of Transp. v. Georgia Mining Ass'n, 252 Ga. 128, 311 S.E.2d 443 (1984).

RESEARCH REFERENCES

ALR. — State regulation of carriers by motor vehicle as affected by interstate commerce clause, 49 ALR 1203; 62 ALR 52; 85 ALR 1136; 109 ALR 1245; 135 ALR 1358.

Power to limit weight of vehicle or its load with respect to use of streets or highways, 75 ALR2d 376.

Violation of regulation governing size or

weight of motor vehicles, or combinations of vehicles and loads, on the highway as basis of liability for personal injury, death, or damage to private property, 21 ALR3d 989.

Automobiles: construction and operation of statutes or regulations restricting the weight of motor vehicles or their loads, 45 ALR3d 503.

32-6-28. Permits for excess weight and dimensions.

(a) Generally.

(1)(A) The commissioner or an official of the department designated by the commissioner may, in his or her discretion, upon application in writing and good cause being shown therefor, issue a permit in writing authorizing the applicant to operate or move upon the state's public roads a motor vehicle or combination of vehicles and loads whose weight, width, length, or height, or combination thereof, exceeds the maximum limit specified by law, provided that the load transported by such vehicle or vehicles is of such nature that it is a unit which cannot be readily dismantled or separated; and provided, further, that no permit shall be issued to any vehicle whose operation upon the public roads of this state threatens to unduly damage a road or any appurtenance thereto, except that the dismantling limitation specified in this Code section shall not apply to loads which consist of cotton, tobacco, concrete pipe, and plywood that do not exceed a width of nine feet or of round bales of hay that do not exceed a width of 11 feet and which are not moved on part of The Dwight D. Eisenhower System of Interstate and Defense Highways. However, vehicles transporting portable buildings and vehicles not exceeding 65 feet in length transporting boats on roads not a part of The Dwight D. Eisenhower System of Interstate and Defense Highways, regardless of whether the nature of such buildings or boats is such that they can be readily dismantled or separated, may exceed the lengths and widths established in this article, provided that a special permit for such purposes has been issued as provided in this Code section, but no such special permit shall be issued for a load exceeding 12 feet in width when such load may be readily dismantled or separated. A truck tractor and low boy type trailer may, after depositing its

permitted load, return to its point of origin on the authorization of its original permit.

(B) Notwithstanding the provisions of subparagraph (A) of this paragraph, the commissioner or an official of the department designated by the commissioner may, in his or her discretion, upon application in writing and good cause being shown therefor, issue to a specific tow vehicle a permit in writing authorizing the applicant to operate or move upon the state's public roads a motor vehicle or combination of vehicles and loads for transporting not more than two modular housing units or sectional housing units if the total weight, width, length, and height of the vehicle or combination of vehicles, including the load, does not exceed the limits specified in Code Sections 32-6-22 and 32-6-26. Permission to transport two modular housing units is only authorized when the modular unit transporter meets the minimum specifications contained in subparagraph (C) of this paragraph. No permit shall be issued to any vehicle or combination of vehicles whose operation upon the public roads of this state threatens the safety of others or threatens to damage unduly a road or any appurtenance thereto.

(C) A modular unit transporter shall meet all requirements of the Federal Motor Carrier Safety Administration and all state safety requirements, rules, and regulations. The modular unit transporter shall be properly registered and have a proper, current license plate. At a minimum, the modular unit transporter shall:

- (i) Be constructed of 12 inch steel I beams doubled and welded together;

- (ii) Have all axles equipped with brakes;

- (iii) Have every floor joist on each modular section securely attached to the beams with lag bolts and washers, or lag bolts, washers, and cable winches; and

- (iv) Have an overall length not to exceed 80 feet including the hitch.

(2) Permits may be issued, on application to the department, to persons, firms, or corporations without specifying license plate numbers in order that such permits which are issued on an annual basis may be interchanged from vehicle to vehicle. The department is authorized to promulgate reasonable rules and regulations which are necessary or desirable to govern the issuance of such permits, provided that such rules and regulations are not in conflict with this title or other provisions of law.

(3) Every such permit shall be carried in the vehicle or combination of vehicles to which it refers and shall be open to inspection by

any police officer, state trooper, or authorized agent of the department.

(4) The application for any such permit shall describe the type of permit applied for, as said types of permits are described in subsection (c) of this Code section. In addition, the application for a single-trip permit shall describe the points of departure and destination.

(5) The commissioner or an official of the department designated by the commissioner is authorized to withhold such permit or, if such permit is issued, to establish seasonal or other time limitations within which the vehicles described may be operated on the public road indicated, or otherwise to limit or prescribe conditions of operation of such vehicles when necessary to ensure against undue damage to the road foundation, surfaces, or bridge structures, and to require such undertaking or other security as may be deemed necessary to compensate the state for any injury to any roadway or bridge structure.

(6) For just cause, including, but not limited to, repeated and consistent past violations, the commissioner or an official of the department designated by the commissioner may refuse to issue or may cancel, suspend, or revoke the permit and any permit privileges of an applicant or permittee. The specific period of time of any suspension shall be determined by the department. In addition, any time the restrictions or conditions within which a permitted vehicle must be operated are violated, the permit may be immediately declared null and void.

(7) The department is authorized to promulgate rules and regulations necessary to enforce the suspension of permits authorized in this Code section.

(8) The department shall issue rules to establish a driver training and certification program for drivers of vehicles escorting oversize/overweight loads. Any driver operating a vehicle escorting an oversize/overweight load shall meet the training requirements and obtain certification under the rules issued by the department pursuant to this Code section. The rules may provide for reciprocity with other states having a similar program for escort certification. Certification credentials of the driver of an escort vehicle shall be carried in the escort vehicle and be readily available for inspection by law enforcement personnel or an authorized employee of the department. The department shall implement the vehicle escort driver training and certification program on or before July 1, 2010, and the requirements for training and certification shall be enforced beginning on January 1, 2011.

(9) Permit holders shall be required to meet the following minimum insurance standards:

(A) For loads where the gross vehicle weight is less than or equal to 10,000 pounds:

(i) For bodily injury a limit of \$50,000.00 per person for injury or death as a result of any one occurrence; and

(ii) For property damage a limit of \$50,000.00 for damage to property of others in any one occurrence; or

(B) For commercial motor carriers where the gross vehicle weight is greater than 10,000 pounds:

(i) For bodily injury a minimum of \$300,000.00 for each person and \$1 million for multiple persons for injury or death as a result of any one occurrence; and

(ii) For property damage a minimum of \$1 million for damage to property of others in any one occurrence.

(b) Duration and limits of permits.

(1) **Annual permit.** The commissioner or an official of the department designated by the commissioner may, pursuant to this Code section, issue an annual permit which shall permit a vehicle to be operated on the public roads of this state for 12 months from the date the permit is issued even though the vehicle or its load exceeds the maximum limits specified in this article. However, except as specified in paragraph (2) of this subsection, an annual permit shall not authorize the operation of a vehicle:

(A) Whose total gross weight exceeds 100,000 pounds;

(B) Whose single axle weight exceeds 25,000 pounds;

(C) Whose total load length exceeds 100 feet;

(D) Whose total width exceeds 102 inches or whose load width exceeds 144 inches; or

(E) Whose height exceeds 14 feet and six inches.

(2) **Annual permit plus.** Vehicles and loads that meet the requirements for an annual permit may apply for a special annual permit to carry wider loads on the NHS. The wider load limits shall be a maximum of 14 feet wide from the base of the load to a point 10 feet above the pavement and 14 feet and eight inches for the upper portion of the load.

(3) **Annual commercial wrecker emergency tow permit.** Pursuant to this Code section, the commissioner may issue an annual

permit for vehicles towing disabled, damaged, or wrecked commercial vehicles even though such wrecker or its load exceeds the maximum limits specified in this article. However, an annual commercial wrecker emergency tow permit shall not authorize the operation of a vehicle:

- (A) Whose single axle weight exceeds 21,000 pounds;
- (B) Whose load on any tandem axle exceeds 40,000 pounds; or
- (C) Whose total load length exceeds 125 feet.

(4) **Six-month permit.** Six-month permits may be issued for loads of tobacco or unginned cotton the widths of which do not exceed nine feet, provided that such loads shall not be operated on The Dwight D. Eisenhower System of Interstate and Defense Highways.

(5) **Single trip.** Pursuant to this Code section, the commissioner may issue a single-trip permit to any vehicle or load allowed by federal law.

(6) **Multitrip.** Pursuant to this Code section, the commissioner may issue a multitrip permit to any vehicle or load allowed by federal law. A multitrip permit authorizes the permitted load to return to its original destination on the same permit, if done so within ten days, with the same vehicle configuration, and following the same route, unless otherwise specified by the department. A multitrip permit authorizes unlimited permitted loads on the same permit, if done so within the allowable ten days, with the same vehicle configuration, and following the same route.

(c) **Fees.** The department may promulgate rules and regulations concerning the issuance of permits and charge a fee for the issuance thereof as follows:

(1) **Annual.** Charges for the issuance of annual permits shall be \$150.00 per permit.

(2) **Annual permit plus.** Charges for the issuance of annual permits plus shall be \$500.00 per permit.

(3) **Annual commercial wrecker emergency tow permit.** Charges for the issuance of annual commercial wrecker emergency tow permits shall be \$500.00 per permit.

(4) **Six months.** The charges for the issuance of six-month permits for loads of tobacco or unginned cotton shall be \$25.00 per permit.

(5) **Single trip.** Charges for the issuance of single-trip permits shall be as follows:

- (A) Any load not greater than 16 feet wide, not greater than 16 feet high, and not weighing more than 150,000 pounds or any load

greater than 100 feet long which does not exceed the maximum width, height, and weight limits specified by this subparagraph . \$ 30.00

(B) **Superload permit.** Any load having a width, height, or weight exceeding the maximum limit therefor specified in subparagraph (A) of this paragraph and not weighing more than 180,000 pounds 125.00

(C) **Superload plus permit.** Any load having a weight exceeding the maximum limit therefor specified in subparagraph (B) of this paragraph 500.00

(6) **Multitrip.** Charges for the issuance of multitrip permits shall be \$100.00 for any load not greater than 16 feet wide, not greater than 16 feet high, and not weighing more than 150,000 pounds or any load greater than 100 feet long which does not exceed the maximum width, height, and weight limits specified by this paragraph.

(d) Notwithstanding any provision of Code Section 48-2-17 to the contrary, all fees collected in accordance with this Code section shall be paid to the treasurer of the department to help defray the expenses of enforcing the limitations set forth in this article and may also be used for public road maintenance purposes in addition to any sums appropriated therefor to the department. (Ga. L. 1968, p. 30, § 1; Ga. L. 1969, p. 637, § 1; Ga. L. 1971, p. 43, § 1; Ga. L. 1971, p. 462, §§ 2, 3; Ga. L. 1972, p. 356, §§ 1, 2; Code 1933, § 95A-961, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1974, p. 1422, § 38; Ga. L. 1975, p. 400, § 1; Ga. L. 1979, p. 439, § 4; Ga. L. 1980, p. 576, § 7; Ga. L. 1982, p. 3, § 32; Ga. L. 1983, p. 1798, § 5; Ga. L. 1986, p. 471, §§ 1-3; Ga. L. 1986, p. 655, § 1; Ga. L. 1987, p. 846, § 1; Ga. L. 1992, p. 987, § 1; Ga. L. 1992, p. 2467, §§ 2-4; Ga. L. 1993, p. 348, § 1; Ga. L. 1995, p. 10, § 32; Ga. L. 1995, p. 155, § 1; Ga. L. 1996, p. 1010, § 3; Ga. L. 1996, p. 1512, § 3A; Ga. L. 1999, p. 567, § 3; Ga. L. 2000, p. 136, § 32; Ga. L. 2000, p. 1654, § 2; Ga. L. 2002, p. 1126, §§ 5, 6; Ga. L. 2010, p. 442, § 3/HB 1174; Ga. L. 2011, p. 548, §§ 3, 4/SB 54; Ga. L. 2012, p. 732, § 1/HB 835; Ga. L. 2012, p. 775, § 32/HB 942.)

The 2010 amendment, effective July 1, 2010, added the second sentence in subparagraph (a)(1)(B); added subparagraph (a)(1)(C); added paragraphs (a)(8) and (a)(9); deleted the former undesignated ending paragraph in paragraph (b)(1), which read: "Furthermore, an annual permit to operate a vehicle which exceeds the height limitations set forth in Code Section 32-6-22 shall be issued only on condition of payment of an indemnity bond or proof of insurance pro-

tection for \$300,000.00. Such bond or insurance protection, conditioned for payment to the department, shall be held in trust for the benefit of the owners of bridges and appurtenances thereto, traffic signals, signs, or other highway structures damaged by a vehicle operating under authority of such overheight permit. The liability under the bond or insurance certificate shall be absolute and shall not depend on proof of negligence or fault on the part of the permittee, his or her

agents, or operators.”; in paragraph (b)(2), substituted “ANNUAL PERMIT PLUS” for “STAA ANNUAL PERMIT” at the beginning and substituted “NHS” for “STAA system of roads” at the end of the first sentence; in paragraph (c)(2), substituted “ANNUAL PERMIT PLUS” for “STAA ANNUAL PERMIT” at the beginning, deleted “STAA” preceding “annual” and inserted “plus”; and, in subparagraphs (c)(4)(B) and (c)(4)(C), added the subparagraph catchlines at the beginning.

The 2011 amendment, effective July 1, 2011, deleted “specifically” preceding “describe” in the first sentence of paragraph (a)(4); and added paragraphs (b)(4) and (c)(5).

The 2012 amendments. — The first 2012 amendment, effective July 1, 2012, added paragraph (b)(3); redesignated former paragraphs (b)(2.1) through (b)(4) as present paragraphs (b)(4) through (b)(6),

respectively; added paragraph (c)(3); and redesignated former paragraphs (c)(3) through (c)(5) as present paragraphs (c)(4) through (c)(6), respectively. The second 2012 amendment, effective May 1, 2012, part of an Act to revise, modernize, and correct the Code, substituted “Code Sections 32-6-22 and 32-6-26” for “Code Section 32-6-22 and Code Section 32-6-26” in subparagraph (a)(1)(B) and made punctuation changes in subparagraphs (c)(4)(B) and (c)(4)(C) (now (c)(5)(B) and (c)(5)(C)).

Cross references. — License fees for different weight categories of vehicles, § 40-2-151.

Administrative rules and regulations. — Overweight assessment citation, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Driver Services, Administration, Chapter 375-1-3.

JUDICIAL DECISIONS

Cited in DOT v. Del-Cook Timber Co., 248 Ga. 734, 285 S.E.2d 913 (1982).

OPINIONS OF THE ATTORNEY GENERAL

Issuance of permits. — Commissioner or the commissioner’s designee is empowered to issue annual permits which authorize the operation of vehicles which do not exceed a height of 14’6” for hauling automobiles when the conditions specified in this section have been met. 1973 Op. Att’y Gen. No. 73-110 (see O.C.G.A. § 32-6-28).

When considering issuance of permits for vehicles exceeding maximum weight or dimensions allowed by law, discretion of the commissioner of transportation or the commissioner’s designee is limited to consideration of whether good cause for issuance of the permit has been shown by the applicant, whether the loads transported

may be readily dismantled or separated, and whether the vehicle and load threatens to unduly damage the roads of the state. 1982 Op. Att’y Gen. No. 82-84.

Permits for moving houses. — Municipal corporation, which has the authority to control the streets and highways within the municipality’s corporate limits, may enact an ordinance requiring that permits be obtained prior to moving houses on streets and highways lying within the corporate limits and charging a fee reasonably related to the expenses incurred by a municipality during the course of moving a house. 1974 Op. Att’y Gen. No. U74-23.

RESEARCH REFERENCES

ALR. — State regulation of carriers by motor vehicle as affected by interstate commerce clause, 49 ALR 1203; 62 ALR 52; 85 ALR 1136; 109 ALR 1245; 135 ALR 1358.

Power to limit weight of vehicle or its load with respect to use of streets or highways, 75 ALR2d 376.

Validity, construction, and application of statutes or other regulations affecting

the moving of buildings on highways, 83 ALR2d 464.

Violation of regulation governing size or weight of motor vehicles, or combinations of vehicles and loads, on the highway as basis of liability for personal injury, death,

or damage to private property, 21 ALR3d 989.

Automobiles: construction and operation of statutes or regulations restricting the weight of motor vehicles or their loads, 45 ALR3d 503.

32-6-29. Responsibility of the Department of Transportation; responsibility of the Department of Public Safety.

(a) The Department of Transportation shall be responsible for rules and regulations relating to size and weight limits and issuance of permits under this article.

(b) The Department of Transportation shall not, however, employ any law enforcement officers or agents except as may be specifically authorized by other laws. Law enforcement responsibility for enforcement of this article shall be in the Department of Public Safety. (Ga. L. 1960, p. 1122, § 1; Ga. L. 1968, p. 193, § 2; Code 1933, § 95A-962, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1974, p. 1422, § 40; Ga. L. 1976, p. 1500, § 1; Ga. L. 1978, p. 1989, § 3; Ga. L. 1979, p. 814, § 1; Ga. L. 1982, p. 3, § 32; Ga. L. 1993, p. 91, § 32; Ga. L. 1993, p. 366, § 1; Ga. L. 2000, p. 951, § 2-6; Ga. L. 2000, p. 1199, § 1; Ga. L. 2005, p. 334, § 12-3/HB 501.)

JUDICIAL DECISIONS

Department of Transportation enforcement officer had authority to enforce travel restrictions in high occupancy vehicle lanes. *Edge v. State*, 226 Ga. App. 559, 487 S.E.2d 117 (1997).

Cited in *Smith v. Commercial Transp., Inc.*, 220 Ga. App. 866, 470 S.E.2d 446 (1996).

OPINIONS OF THE ATTORNEY GENERAL

Arrest powers of Department of Transportation enforcement officers extend only to arrests for commission of

crimes specifically enumerated by statute conferring powers. 1978 Op. Att'y Gen. No. 78-73.

RESEARCH REFERENCES

ALR. — Authority of public official, whose duties or functions generally do not

entail traffic stops, to effectuate traffic stop of vehicle, 18 ALR6th 519.

32-6-30. Stopping vehicles for purposes of weighing, measuring, or inspecting; reports of violations; refusal to stop.

(a) Any law enforcement officer or employee of the Department of Public Safety to whom law enforcement authority has been designated who observes a motor vehicle being operated upon a public road of the

state and who has reason to believe that: (1) Any provision of this article is being violated; (2) The vehicle is improperly licensed in violation of Code Sections 40-2-150 through 40-2-162; or (3) A fuel tax registration card is not being carried or that a proper distinguishing identification marker is not affixed to the vehicle in violation of Code Section 48-9-39 is authorized to stop such vehicle and weigh, measure, or inspect the same. Violations of such licensing or fuel tax registration and identification requirements shall be reported to the Department of Revenue.

(b)(1) If the operator of the vehicle shall refuse to stop upon proper order as directed by a person authorized by subsection (a) of this Code section to stop, weigh, measure, or inspect the vehicle or its load, the operator shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed \$200.00. The operator shall have the right to post an appropriate bond, which shall not exceed \$400.00, when any law enforcement officer or employee of the Department of Public Safety authorized to enforce this article apprehends said operator for any violation of this article.

(2) In addition, the operator's driver's license or nonresident's driving privilege may be suspended for a period of not more than 90 days by the Department of Driver Services upon satisfactory proof of said refusal to stop or drive the vehicle upon the scales. Each person who shall apply for a Georgia driver's license, or for nonresident driving privileges, or for a renewal of same thereby consents to stop such vehicle for inspection or to drive such vehicle upon scales whenever so ordered by a law enforcement official or authorized employee of the Department of Public Safety. (Ga. L. 1960, p. 1122, § 2; Ga. L. 1968, p. 193, §§ 1, 3; Code 1933, § 95A-963, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1982, p. 3, § 32; Ga. L. 2000, p. 951, § 2-7; Ga. L. 2002, p. 1074, § 5; Ga. L. 2005, p. 334, § 12-4/HB 501; Ga. L. 2007, p. 47, § 32/SB 103.)

Cross references. — General duty of Georgia State Patrol to check motor vehicles for excess load, § 35-2-33. Stopping of motor vehicles for lack of proper equipment or for other safety violations, § 40-8-200.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2002, "Code Sections 40-2-150 through 40-2-162; or" was substituted for "Code Section 40-2-150 through Code Section 40-2-162; or" in paragraph (a)(2) (now item (a)(2)).

Editor's notes. — Ga. L. 2002, p. 1074, § 8, not codified by the General Assembly,

provides that: "This Act shall not abate any prosecution, punishment, penalty, administrative proceedings or remedies, or civil action related to any violation of law committed prior to the effective date of this Act." The effective date of Ga. L. 2002, p. 1074 was July 1, 2002.

Administrative rules and regulations. — Overweight assessment citation, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Driver Services, Administration, Chapter 375-1-3.

OPINIONS OF THE ATTORNEY GENERAL

O.C.G.A. § 32-6-30 is a traffic law since the statute provides for criminal liability for refusing to stop and permit vehicles to be weighed, measured, and inspected. 1981 Op. Att'y Gen. No. U81-17.

Classification of traffic offenses includes violations of O.C.G.A. §§ 32-6-30 and 46-7-61 (now repealed). 1981 Op. Att'y Gen. No. U81-17.

Cases may be tried upon uniform traffic citation. — Since violations of O.C.G.A. §§ 32-6-30 and 46-7-61 (now repealed) constitute misdemeanor traffic offenses, cases arising from these sections may be tried upon a uniform traffic citation, and any cash appearance bonds posted may be forfeited as provided by O.C.G.A. § 17-6-8. 1981 Op. Att'y Gen. No. U81-17.

32-6-31. Construction of Code Sections 32-1-10, 32-6-26, 32-6-27, and 32-6-29.

The provisions of Code Sections 32-1-10, 32-6-26, 32-6-27, and 32-6-29 shall not, and shall not be construed to, modify, change, or diminish any power or duty held by any other law enforcement unit, enforcement officer, or peace officer. (Ga. L. 1978, p. 1989, § 5; Ga. L. 1982, p. 3, § 32; Ga. L. 2000, p. 136, § 32; Ga. L. 2002, p. 415, § 32.)

ARTICLE 3

CONTROL OF SIGNS AND SIGNALS

Cross references. — Regulation of advertisements and advertising structures along federal parkway rights of way, § 32-3-38.

PART 1

PUBLIC ROADS GENERALLY

32-6-50. Uniform regulations governing erection and maintenance of traffic-control devices; placement, removal, defacement, damaging, or sale of devices.

(a) The department shall promulgate uniform regulations governing the erection and maintenance on the public roads of Georgia of signs, signals, markings, or other traffic-control devices, such uniform regulations to supplement and be consistent with the laws of this state. Insofar as practical, with due regard to the needs of the public roads of Georgia, such uniform regulations shall conform to the recommended regulations as approved by the American Association of State Highway and Transportation Officials.

(b) In conformity with its uniform regulations, the department shall place and maintain, or cause to be placed and maintained, such traffic-control devices upon the public roads of the state highway system as it shall deem necessary to regulate, warn, or guide traffic,

except that the department shall place and maintain a sign for each railroad crossing at grade on the state highway system, warning motorists of such crossing, provided that each railroad company shall also erect and maintain a railroad crossbuck sign on its right of way at every such crossing. The department may remove or direct removal of all traffic-control devices and signs which are erected on the state highway system by any governing authority without the permission of the department.

(c) In conformity with the uniform regulations of the department:

(1) Counties and municipalities shall place and maintain upon the public roads of their respective public road systems such traffic-control devices as are necessary to regulate, warn, or guide traffic except that counties and municipalities also shall erect and maintain a sign for each railroad crossing at grade on their respective county road or municipal street systems, warning motorists of such crossing. Furthermore, each railroad company shall erect and maintain a railroad crossbuck sign on its right of way at all such crossings; and

(2) Counties, on their respective road systems, shall place and maintain on each county road which is authorized as a designated local truck route, pursuant to official resolution of the county, at each intersection of such road with a state highway signs identifying such county road as a designated local truck route and giving notice of the maximum weight limits for such designated local truck route in accordance with subsection (f) of Code Section 32-6-26.

(d) It shall be unlawful for any person to remove, deface, or damage in any way any official traffic-control device lawfully erected or maintained pursuant to this Code section or any other law.

(e) No person, firm, corporation, or other entity shall offer for sale any sign, signal, marking, or other device intended to regulate, warn, or guide traffic upon the public roads of this state, unless it conforms with the uniform regulations promulgated under subsection (a) of this Code section. Any person, firm, corporation, or other entity who sells any sign, signal, marking, or other device intended to regulate, warn, or guide traffic upon the public roads of this state in violation of this Code section shall make restitution to the purchaser in an amount equal to the entire sum, plus interest, originally paid for the sign, signal, marking, or other device. Any person, firm, corporation, or other entity who knowingly sells any sign, signal, marking, or other device intended to regulate, warn, or guide traffic upon the public roads of this state in violation of subsection (a) of this Code section shall be guilty of a misdemeanor. (Ga. L. 1931, p. 221, § 3; Code 1933, § 95-2003; Ga. L. 1953, Nov.-Dec. Sess., p. 556, §§ 31-33, 39; Ga. L. 1968, p. 1427, § 1;

Code 1933, § 95A-901, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1981, p. 1826, § 1; Ga. L. 1998, p. 1206, § 5; Ga. L. 2012, p. 1343, § 8/HB 817.)

The 2012 amendment, effective July 1, 2012, deleted “and approval of the commissioner” following “of the county” in the middle of paragraph (c)(2).

Cross references. — Required obser-

vance of traffic signs, signals, and markings, § 40-6-20 et seq. Erection and maintenance of crossbuck signs at highway grade crossings generally, § 46-8-194 et seq.

JUDICIAL DECISIONS

Department’s duty to design, manage, and improve state highway system. — When the charge in question does in fact state that the Department of Transportation (DOT) has “general responsibility to design, manage and improve the state highway system,” it seems to capture the essence of the sections the defendant relies upon, which are in fact very broad, general descriptions of the duties of the DOT. The additional material used by the court is drawn from the more specific statutory description of the respective duties of the DOT and municipalities. Thus, O.C.G.A. § 32-2-2 does indeed mention the general duty of the DOT to “designate, improve, manage, control, construct, and maintain.” *Banks v. City of Brunswick*, 529 F. Supp. 695 (S.D. Ga. 1981), *aff’d*, 667 F.2d 97 (11th Cir. 1982).

Proof of department liability insufficient. — Since the trial court did not have before the court evidence of proof that Department of Transportation regulations designated specific acts or omissions to be negligence per se, that the collision forming the basis of the suit was the harm intended to guard against, and that the plaintiffs fell within the class of persons to be protected by the regulations, the court did not err in denying the plaintiffs’ motion for directed verdict. *Donaldson v. DOT*, 236 Ga. App. 411, 511 S.E.2d 210 (1999).

Department is responsible for traffic-control devices. — Once a general contractor completes the work on a public road called for under a contract with the Department of Transportation (DOT), the DOT is responsible for traffic-control devices on the road. *Baker v. Reynolds Trucking Co.*, 181 Ga. App. 242, 351 S.E.2d 657 (1986).

When the trial court correctly interpreted contract provisions as only requiring the defendant to install traffic control devices, or to take preventative or corrective action when traffic related problems were caused from preexisting hazards or by the defendant’s construction activities, the defendant did not undertake to perform the duties under O.C.G.A. § 32-4-41(1) and subsection (c) of O.C.G.A. § 32-6-50. *Adams v. APAC-Georgia, Inc.*, 236 Ga. App. 215, 511 S.E.2d 581 (1999).

Nothing in O.C.G.A. § 32-6-50 or O.C.G.A. § 32-6-51 prohibits the Georgia Department of Transportation (DOT) from delegating responsibility to erect and maintain traffic control signs to a private contractor through a construction contract; § 32-6-50 does not saddle DOT with ultimate responsibility for installing and maintaining traffic control devices on all county and municipal road systems. *Comanche Constr., Inc. v. DOT*, 272 Ga. App. 766, 613 S.E.2d 158 (2005).

Contractors were not liable for negligently controlling traffic as the Georgia Department of Transportation (DOT) was required to place and maintain, or cause to be placed and maintained, traffic control devices and the DOT was responsible for approving all traffic control plans before implementation by a contractor; the injured party failed to show that the contractor failed to implement the traffic control devices pursuant to the DOT’s directives, even though the injured party’s accident reconstruction expert and drivers involved in the accident found the traffic control measures inadequate or improper. *Fraker v. C.W. Matthews Contr. Co.*, 272 Ga. App. 807, 614 S.E.2d 94 (2005), *aff’d*,

2007 U.S. App. LEXIS 28793 (11th Cir. 2007).

Common law action against railroad precluded. — Georgia Code of Public Transportation, O.C.G.A. § 32-1-1 et seq., precluded a common-law cause of action against a railroad for the failure to install adequate protective devices at a grade crossing on a public road since the railroad had not been requested to do so by the appropriate governmental entity. *Southern Ry. v. Georgia Kraft Co.*, 188 Ga. App. 623, 373 S.E.2d 774 (1988).

Because the Georgia Code of Public Transportation, O.C.G.A. § 32-1-1 et seq., abrogated any common law duty on the part of defendant railroad to install adequate signal equipment at a railroad crossing where the driver's car was struck by a train, the common law negligence claim asserted by plaintiffs, the driver's survivors, was dismissed for failure to state a claim; under O.C.G.A. § 32-6-51, the railroad company would have acted in violation of Georgia law if the company erected traffic signals on the public road unless the company was required or authorized to do so by O.C.G.A. §§ 32-6-50 and 32-6-51(d), or some "other law," and O.C.G.A. § 32-6-200 delegated responsibility for the installation of protective devices on public roads to the appropriate governmental entity. *Bentley v. CSX Transp., Inc.*, 437 F. Supp. 2d 1327 (N.D. Ga. 2006).

Common law duty to install warnings at grade crossings abrogated. — O.C.G.A. §§ 32-6-50 and 32-6-51 work in conjunction to abrogate a railroad's common law duty to install devices to warn of approaching trains at grade crossings. *CSX Transp., Inc. v. Trism Specialized Carriers, Inc.*, 182 F.3d 788 (11th Cir. 1999).

Even though the defendant railroad determined that a crossing might need additional warning signals, when the Department of Transportation inspected the crossing and determined that active warning signals were not needed, the railroad could not be held liable for not installing signals. *Crockett v. Norfolk S. Ry.*, 95 F. Supp. 2d 1353 (N.D. Ga. 2000), *aff'd*, 239 F.3d 370, (11th Cir. 2000).

No penalty for non-compliance. — Non-compliance with O.C.G.A. § 32-6-50

by the Department of Transportation (DOT) does not exact a penalty and produces no injury to individual rights. *Donaldson v. DOT*, 236 Ga. App. 411, 511 S.E.2d 210 (1999).

Responsibility of private owner. — Trial court correctly concluded that an apartment complex owner had no responsibility for installing or maintaining traffic signal device as that duty was officially vested in the city by virtue of subsection (c) of O.C.G.A. § 32-6-50. *Zumbado v. Lincoln Property Co.*, 209 Ga. App. 163, 433 S.E.2d 301 (1993).

County and municipal obligation. — When an injured party sued the Georgia Department of Transportation (DOT) for injuries received in a single-car accident on a county road, the party could not maintain a negligent maintenance claim against DOT for not maintaining adequate warning devices on the road because the road on which the accident occurred was not part of the state highway system, nor did the road lead to a state park, so, under O.C.G.A. § 32-6-50(c)(1), the county was obligated to maintain such devices. *Ogles v. E.A. Mann & Co.*, 277 Ga. App. 22, 625 S.E.2d 425 (2005).

Jury instructions. — In a wrongful death action, the district court did not err by instructing the jury concerning the railroad's duty to maintain traffic control devices because taking all of the instructions together, the jury was properly informed that the railroad could not be held liable for the decision about which warning device to put in place or continue in place, but the railroad could be held liable for any failure to repair an existing warning light. *Wright v. CSX Transp., Inc.*, 375 F.3d 1252 (11th Cir. 2004).

Cited in *Peluso v. Central of Ga. R.R.*, 165 Ga. App. 215, 299 S.E.2d 51 (1983); *DOT v. Brown*, 218 Ga. App. 178, 460 S.E.2d 812 (1995); *DOT v. Brown*, 267 Ga. 6, 471 S.E.2d 849 (1996); *Ballenger Paving Co. v. Gaines*, 231 Ga. App. 565, 499 S.E.2d 722 (1998); *CSX Transp., Inc. v. Trism Specialized Carriers, Inc.*, 9 F. Supp. 2d 1374 (N.D. Ga. 1998); *DOT v. Cushway*, 240 Ga. App. 464, 523 S.E.2d 340 (1999); *Hubbard v. DOT*, 256 Ga. App. 342, 568 S.E.2d 559 (2002); *DOT v. Dupree*, 256 Ga. App. 668, 570 S.E.2d 1

(2002); CSX Transp., Inc. v. Deen, 269 Ga. App. 641, 605 S.E.2d 50 (2004); Murray v. Ga. DOT, 284 Ga. App. 263, 644 S.E.2d 290 (2007).

OPINIONS OF THE ATTORNEY GENERAL

Department of Transportation's authority over public highways. — Authority to control, manage, and close public highways is vested in the Department of Transportation, not the Department of Public Safety. 1973 Op. Att'y Gen. No. 73-184.

Municipal control of traffic. — Traffic on city streets which is not part of the

State Highway System is under municipal control. 1977 Op. Att'y Gen. No. U77-45.

Cameras used for enforcement of traffic control devices may be erected by counties at the intersection of roads within the state highway system with the approval of the Department of Transportation. 2000 Op. Att'y Gen. No. U2000-12.

RESEARCH REFERENCES

ALR. — Right of private citizen to complain of rerouting of highway or removal or change of route or directional signs, 97 ALR 192.

Liability, in motor vehicle-related cases, of governmental entity for injury or death resulting from design, construction, or failure to warn of narrow bridge, 2 ALR4th 635.

Highways: Governmental duty to provide curve warnings or markings, 57 ALR4th 342.

Governmental liability for failure to post highway deer crossing warning signs, 59 ALR4th 1217.

32-6-51. Erection, placement, or maintenance of unlawful or unauthorized structure; removal thereof; penalty for violation; authorization of placement, erection, and maintenance of commercial advertisements by transit agency.

(a)(1) It shall be unlawful for any person to erect, place, or maintain within the dedicated right of way of any public road any sign, signal, or other device except as authorized by this subsection or subsection (d) of this Code section or as required or authorized by Code Section 32-6-50 or any other law.

(2) The erection, placement, and maintenance of signs within the dedicated rights of way of county roads or municipal streets may be authorized and governed by ordinances adopted by governing authorities of counties and municipalities having jurisdiction over such roads or streets, which ordinances as to such dedicated rights of way of county roads or municipal streets may be as or less restrictive than the provisions of paragraph (1) of this subsection.

(b) It shall be unlawful for any person to erect, place, or maintain in a place or position visible from any public road any unauthorized sign, signal, device, or other structure which:

(1) Imitates, resembles, or purports to be an official traffic-control device;

(2) Hides from view or interferes with the effectiveness of any official traffic-control device;

(3) Obstructs a clear view from any public road to any other portion of such public road, to intersecting or adjoining public roads, or to property abutting such public road in such a manner as to constitute a hazard to traffic on such roads; or

(4) Because of its nature, construction, or operation, constitutes a dangerous distraction to or interferes with the vision of drivers of motor vehicles.

(c) Any sign, signal, device, or other structure erected, placed, or maintained on the dedicated right of way of any public road in violation of subsection (a) or (b) of this Code section or in violation of any ordinance adopted pursuant to subsection (a) of this Code section is declared to be a public nuisance, and the officials having jurisdiction of the public road affected may remove or direct the removal of the same. Where any sign, signal, device, or other structure is erected, placed, or maintained in violation of subsection (b) of this Code section, but not on the dedicated right of way of any public road, the officials having jurisdiction of the public road affected may order the removal of such structure by written notice to the owner of the structure or the owner of the land on which the structure is located. If such structure is not removed within 30 days after the giving of such order of removal, such officials are authorized to remove or cause to be removed such structure and to submit a statement of expenses incurred in the removal to the owner of the structure or to the owner of the land on which the structure is located. If payment or arrangement to make payment is not made within 60 days after the receipt of said statement, the department shall certify the amount thereof for collection to the Attorney General.

(d)(1) As used in this subsection, the term:

(A) "Bus shelter" means a shelter or bench located at bus stops for the convenience of passengers of public transportation systems owned and operated by governmental units or public authorities or located on county or municipality rights of way for the convenience of residents.

(B) "Commercial advertisements" means any printed or painted signs on a bus shelter for which space has been rented or leased from the owner of such shelter.

(2) Bus shelters, including those on which commercial advertisements are placed, may be erected and maintained on the rights of

way of public roads subject to the following conditions and requirements:

(A) Any public transit system wishing to erect and maintain a bus shelter on the right of way of a state road shall apply to the department for a permit, and as a condition of the issuance of the permit, the department must approve the bus shelter building plans and the location of the bus shelter on the right of way; provided, however, that such approval is subject to any and all restrictions imposed by Title 23, U.S.C., and Title 23, Code of Federal Regulations relating to the federal-aid system. This paragraph shall entitle only public transit systems or their designated agents the right to be issued permits under this paragraph;

(B) If the bus shelter is to be located on the right of way of a public road other than a state road within a county or municipality, application for permission to erect and maintain such shelter shall be made to the respective county or municipality. Such application shall conform to the county's and municipality's regulations governing the erection and maintenance of such structures. When the county or municipality is served by a public transit agency or authority, the applications for all bus shelters on routes of such agency or authority shall also be forwarded by the applicant to such transit agency or authority and subject to the approval of such agency or authority; and

(C) As a condition of issuing a permit for the erection of a bus shelter on the right of way of a state road, the department shall require that the bus shelter shall be properly maintained and that its location shall meet minimum setback requirements as follows:

(i) Where a curb and gutter are present, there shall be a minimum of four feet clearance from the face of the curb to any portion of the bus shelter or the bus shelter shall be placed at the back of the existing concrete sidewalk; or

(ii) Where no curb or gutter is present, the front of the bus shelter shall be at least ten feet from the edge of the main traveled roadway.

(3) Any bus shelter erected and maintained on the right of way of a public road in violation of paragraph (2) of this subsection or in violation of the conditions of the permit issued by the department or in violation of the conditions of the consent of the county or municipality is declared to be a public nuisance and if it is determined to be a hazard to public safety by the department, county, or municipality, it may be removed or its removal may be ordered by the department or the governing authority of the respective county or municipality. In every case of removal of a bus shelter as a hazard to public safety by

the department, a county, or a municipality, a good faith attempt shall be made to notify the owner of its removal. In such cases where the department, county, or municipality orders the removal of the bus shelter as a public nuisance, if such a bus shelter is not removed by its owner within 30 days after its owner has been issued a written order of removal by the department or the governing authority of the respective county or municipality, the department or the governing authority of the respective county or municipality may cause the bus shelter to be removed and submit a statement of expenses incurred in the removal to the owner of the bus shelter. In the case of a statement of expenses for removal of a shelter on a state road, if payment or arrangement to make payment is not made within 60 days after the receipt of such statement, the department shall certify the amount thereof to the Attorney General for collection.

(4) The person to whom a permit has been issued for the erection and maintenance of a bus shelter on the right of way of a public road or who places such shelter on a public road other than a state road shall at all times assume all risks for the bus shelter and shall indemnify and hold harmless the State of Georgia, the department, and any county or municipality against all losses or damages resulting solely from the existence of the bus shelter.

(5) Permits for shelters on state roads shall be issued under this subsection only to cities, counties, or public transportation authorities owning or operating public transportation systems or their designated agents.

(e) Each sign erected, placed, or maintained in violation of paragraph (1) of subsection (a) of this Code section shall constitute a separate offense.

(f) Any person who violates paragraph (1) of subsection (a) of this Code section shall be punished the same as for littering under Code Section 16-7-43. Any person who violates subsection (b) of this Code section shall be guilty of a misdemeanor.

(g)(1) As used in this subsection, the term:

(A) "Commercial advertisements" means any printed or painted signs or multiple message signs on or in transit vehicles or facilities for which space has been rented or leased from the owner of such transit vehicles or facilities.

(B) "Transit agency" means any public agency, public corporation, or public authority existing under the laws of this state that is authorized by any general, special, or local law to provide any type of transit services within any area of this state including, but not limited to, the Department of Transportation, the Georgia

Regional Transportation Authority, and the Georgia Rail Passenger Authority.

(C) "Transit vehicles or facilities" means everything necessary and appropriate for the conveyance and convenience of passengers who utilize transit services.

(2) A transit agency may authorize the placement, erection, and maintenance of commercial advertisements on or in transit vehicles or facilities owned or operated by that transit agency and said placement of commercial advertisements shall not be considered conducting commercial enterprises or activities in violation of Code Section 32-6-115. (Ga. L. 1931, p. 221, §§ 1, 2, 4, 5; Code 1933, §§ 95-2002, 95-2004, 95-2005, 95-2006; Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 38; Code 1933, § 95A-902, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1991, p. 1861, § 1; Ga. L. 1992, p. 1504, § 1; Ga. L. 1993, p. 1732, § 1; Ga. L. 2001, Ex. Sess., p. 335, § 5; Ga. L. 2005, p. 601, § 3/SB 160; Ga. L. 2006, p. 275, § 3-10/HB 1320; Ga. L. 2009, p. 302, § 2/HB 101.)

Cross references. — Placement of election campaign posters, signs, and advertisements within right of way of public roads, § 21-1-1. Further provisions regarding display of unauthorized traffic signs, signals, or other markings, § 40-6-25.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1991, "federal-aid system" was substituted for "Federal-aid system" at the end of the first sentence in subparagraph (d)(2)(A).

Editor's notes. — Ga. L. 2006, p. 275, § 1-1/HB 1320, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Comprehensive Litter Prevention and Abatement Act of 2006.'"

Ga. L. 2006, p. 275, § 5-1/HB 1320, not codified by the General Assembly, provides that the Act shall become effective April 21, 2006, for purposes of adopting local ordinances to become effective on or after July 1, 2006.

Law reviews. — For article, "Recommendations Regarding Control of Outdoor Advertising Along the Interstate Highway System in Georgia," see 14 Mercer L. Rev. 308 (1963). For annual survey of trial practice and procedure, see 57 Mercer L. Rev. 381 (2005). For annual survey of trial practice and procedure, see 57 Mercer L. Rev. 381 (2005).

JUDICIAL DECISIONS

Department's duty to design, manage, and improve state highway system. — When the charge in question does in fact state that the Department of Transportation (DOT) has "general responsibility to design, manage and improve the state highway system," it seems to capture the essence of the sections the defendant relies upon, which are in fact very broad, general descriptions of the duties of the DOT. The additional mate-

rial used by the court is drawn from the more specific statutory description of the respective duties of the DOT and municipalities. Thus, O.C.G.A. § 32-2-2 does indeed mention the general duty of the DOT to "designate, improve, manage, control, construct, and maintain." *Banks v. City of Brunswick*, 529 F. Supp. 695 (S.D. Ga. 1981), *aff'd*, 667 F.2d 97 (11th Cir. 1982).

Nothing in O.C.G.A. § 32-6-50 or O.C.G.A. § 32-6-51 prohibits the Georgia

Department of Transportation (DOT) from delegating responsibility to erect and maintain traffic control signs to a private contractor through a construction contract; § 32-6-50 does not saddle DOT with ultimate responsibility for installing and maintaining traffic control devices on all county and municipal road systems. *Comanche Constr., Inc. v. DOT*, 272 Ga. App. 766, 613 S.E.2d 158 (2005).

Bridge partially blocking traffic lights. — Railroad's bridge, which partially blocked traffic lights at a nearby intersection, did not infringe on the public right-of-way, where the space provided by the bridge for the public right-of-way adequately allowed for the safe and unimpeded flow of traffic thereunder and the traffic lights were not part of the bridge's structure. *City of Fairburn v. Cook*, 188 Ga. App. 58, 372 S.E.2d 245, cert. denied, 188 Ga. App. 911, 372 S.E.2d 245 (1988).

Contractor can design and establish detour route with department approval and inspection. — O.C.G.A. § 32-6-51 did not prohibit a contractor from designing and establishing a detour route under a contract with the Georgia Department of Transportation (DOT), subject to DOT's approval and inspection. *Comanche Constr., Inc. v. DOT*, 272 Ga. App. 766, 613 S.E.2d 158 (2005).

Party asserting that structure on private property is unauthorized must establish this fact by showing that the structure was erected or maintained in violation of some statute, code, or local ordinance. *Smith v. Hiawassee Hdwe. Co.*, 167 Ga. App. 70, 305 S.E.2d 805 (1983); *Whidby v. Mr. B's Food Mart*, 182 Ga. App. 408, 356 S.E.2d 78 (1987).

Common law duty to install warnings at grade crossings abrogated. — O.C.G.A. §§ 32-6-50 and 32-6-51 work in conjunction to abrogate a railroad's common law duty to install devices to warn of approaching trains at grade crossings. *CSX Transp., Inc. v. Trism Specialized Carriers, Inc.*, 182 F.3d 788 (11th Cir. 1999).

Because the Georgia Code of Public Transportation, O.C.G.A. § 32-1-1 et seq., abrogated any common law duty on the part of defendant railroad to install adequate signal equipment at a railroad

crossing where the driver's car was struck by a train, the common law negligence claim asserted by plaintiffs, the driver's survivors, was dismissed for failure to state a claim; under O.C.G.A. § 32-6-51, the railroad company would have acted in violation of Georgia law if the company erected traffic signals on the public road unless the company was required or authorized to do so by O.C.G.A. §§ 32-6-50 and 32-6-51(d), or some "other law," and O.C.G.A. § 32-6-200 delegated responsibility for the installation of protective devices on public roads to the appropriate governmental entity. *Bentley v. CSX Transp., Inc.*, 437 F. Supp. 2d 1327 (N.D. Ga. 2006).

Private property structures only unlawful when road view obstructed.

— Structures on private property adjoining road rights-of-way only become unlawful if the structures both obstruct a clear view of roads in such a manner as to constitute a traffic hazard and are unauthorized. *Smith v. Hiawassee Hdwe. Co.*, 167 Ga. App. 70, 305 S.E.2d 805 (1983).

Obstruction was not linked to causation. — While the greenery may have caused some obstruction of vision, there existed no competent evidence that any possible obstruction in visibility did, in fact, cause or contribute to the collision; whereas, the evidence presented created a strong probability that a jury could find that the negligence of the driver was the sole proximate cause of the collision. *Howard v. Gourmet Concepts Int'l, Inc.*, 242 Ga. App. 521, 529 S.E.2d 406 (2000).

Trial court properly granted summary judgment in favor of a landowner in a negligence suit brought by a parent, who asserted that overgrowth on the landowner's property at an intersection obscured the view of the parent's child and caused the accident that killed the child as the parent failed to establish that the landowner violated O.C.G.A. § 32-6-51(b) with regard to having overgrown foliage on the property at the intersection and, otherwise, failed to show any breach of duty on the landowner's part. *Rachels v. Thompson*, 290 Ga. App. 115, 658 S.E.2d 890 (2008), cert. denied, 2008 Ga. LEXIS 778 (Ga. 2008).

Applicability to trees on property abutting railroad crossing. — Cases

involving a landowner's liability for vision-obstructing objects on property abutting a railroad crossing are governed by O.C.G.A. § 32-6-51 and the statute applies to allegedly unauthorized vision-obstructing trees. *United Refrigerated Servs., Inc. v. Emmer*, 218 Ga. App. 865, 463 S.E.2d 535 (1995).

Government entity's liability for vegetation near railroad crossing. — Town was entitled to summary judgment in a survivor's action claiming damages from the survivor's decedent's fatal collision with a train because the allegedly vision-obstructing vegetation was located on the railroad's property, and, further, it was undisputed that the survivor failed to show that the vegetation was planted or maintained in violation of any statute, code, or local ordinance. Furthermore, although railroads could be liable under common law negligence principles, the failure to maintain a railroad right of way was addressed by the Georgia Code of Public Transportation, specifically by O.C.G.A. § 32-6-51. *Town of Register v. Fortner*, 262 Ga. App. 507, 586 S.E.2d 54 (2003).

Town was not entitled to summary judgment on a decedent's nuisance claim as correspondence between the town and the railway indicated that in the months preceding a train-truck accident, the defendants were aware that the overgrown shrubbery needed to be cut back to prevent interference with the line of sight at a railroad crossing; further, photographs were also submitted from which a jury might conclude that the shrubs obscured visibility. *Town of Register v. Fortner*, 274 Ga. App. 586, 618 S.E.2d 26 (2005).

Genuine issue of material fact existed about whether there was an absence of governmental authorization for vegetation that allegedly obscured the decedent's view as the decedent drove a tractor-trailer across the town's railroad crossing and was struck by the railway's train and that issue precluded the appellate court's ruling that reversed the trial court's summary judgment to the town and the railway. *Fortner v. Town of Register*, 278 Ga. 625, 604 S.E.2d 175 (2004).

Cited in *Zumbado v. Lincoln Property Co.*, 209 Ga. App. 163, 433 S.E.2d 301 (1993); *Murray v. Ga. DOT*, 284 Ga. App. 263, 644 S.E.2d 290 (2007).

OPINIONS OF THE ATTORNEY GENERAL

Municipal control of traffic — Traffic on city streets which is not part of the State Highway System is under municipal control. 1977 Op. Att'y Gen. No. U77-45.

Fingerprinting of offenders not re-

quired. — An offense under O.C.G.A. § 32-6-51 is not one for which those charged with a violation are to be fingerprinted. 2007 Op. Att'y Gen. No. 2007-1.

32-6-52. Displays of nudity or sexual conduct on outdoor advertising visible from roadway prohibited; penalty.

(a) As used in this Code section, the term:

(1) "Nudity" means the displaying of any portion of the human female breast below the top of the areola or the displaying of any portion of any human's pubic hair, anus, vulva, or genitals.

(2) "Outdoor advertising" means any commercial advertisement displayed outdoors by means of billboards or signs.

(3) "Sexual conduct" means acts of sexual intercourse, masturbation, sodomy, or fondling of a human's clothed or unclothed genitals, pubic area, buttocks, or, if the human is female, breast.

(b) The General Assembly finds and declares that outdoor advertising containing depictions of nudity or sexual conduct which are visible from the roadways of public roads may be startling or provocative and thereby divert the attention of motor vehicle drivers, thus causing real and substantial hazards to traffic safety. The General Assembly further declares that the purpose of this Code section is to protect the public welfare and safety against such hazards.

(c) No person shall display any outdoor advertising containing any depiction of nudity or sexual conduct when such depiction is visible from the roadway of any public road in the state highway system as defined in Code Section 32-4-1.

(d)(1) Any person who violates subsection (c) of this Code section shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not exceeding \$1,000.00.

(2) Each day during which outdoor advertising is displayed in violation of subsection (c) of this Code section shall constitute a separate offense. (Code 1981, § 32-6-52, enacted by Ga. L. 2006, p. 691, § 2/HB 1097.)

Editor's notes. — Ga. L. 2006, p. 691, § 7/HB 1097, not codified by the General Assembly, provides for severability.

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting required for violators. — Those charged with offenses under O.C.G.A. § 32-6-52 are to be fingerprinted. 2007 Op. Att'y Gen. No. 2007-1.

PART 2

STATE HIGHWAY SYSTEM

Cross references. — Control and regulation of outdoor advertising in relation to federal highways, Ga. Const. 1983, Art. III, Sec. VI, Para. II.

Law reviews. — For comment, "The Federal Highway Beautification Act After Metromedia," see 35 Emory L.J. 419 (1986).

Administrative rules and regulations. — Granting, renewal, and revocation of permits for outdoor advertising,

Official Compilation of the Rules and Regulations of the State of Georgia, State Department of Transportation, Chapter 672-6.

Granting, renewal, and revocation of vegetation management permits for outdoor advertising, Official Compilation of the Rules and Regulations of the State of Georgia, State Department of Transportation, Chapter 672-14.

JUDICIAL DECISIONS

O.C.G.A. Pt. 2, Ch. 6, T. 32 does not violate the right of freedom of expression by restricting outdoor advertising in

areas adjacent to the rights-of-way of interstate and primary systems of highways in this state. Department of Transp. v.

Shiflett, 251 Ga. 873, 310 S.E.2d 509 (1984).

O.C.G.A. Pt. 2, Ch. 6, T. 32 is a proper exercise of the police powers, as the statute provides for compensation for

property rights in signs which were lawfully in existence on the statute's effective date. Department of Transp. v. Shiflett, 251 Ga. 873, 310 S.E.2d 509 (1984).

OPINIONS OF THE ATTORNEY GENERAL

Issuance and renewal of permits for outdoor advertising devices. — Department of Transportation may issue permits for outdoor advertising devices, and renew such permits, within districts zoned "Forest-Agricultural" in Glynn County if the activities permitted in the

district without further action of the zoning authority are commonly and generally recognized as commercial by the department in the department's uniform application of the law. 1975 Op. Att'y Gen. No. 75-24.

32-6-70. Declaration of policy.

(a) The General Assembly declares it to be the policy of this state that the erection or maintenance of outdoor advertising in areas adjacent to the rights of way of roads of the state highway system, which roads are also a part of the interstate and primary systems of highways within the state, shall be regulated in accordance with the terms of this part and the regulations promulgated by the commissioner pursuant thereto and that all outdoor advertising which does not conform to the requirements of this part is a public nuisance. The General Assembly recognizes that the outdoor advertising industry is a bona fide commercial function. However, in no manner shall any outdoor advertising sign be defined as a commercial or industrial activity or be used for the purposes of administering this part. It is the intention of the General Assembly to provide a statutory basis for the regulation of outdoor advertising, such basis to be consistent with the public policy relating to areas adjacent to roads of the state highway system which also form a part of the interstate and primary systems of highways declared by the Congress in Title 23, Section 103, United States Code.

(b) The General Assembly further declares it to be the policy of this state to avert substantial economic hardship by the retention, in specific areas defined by the board, upon request made by the Department of Transportation and approved by the United States Secretary of Transportation, of directional signs, displays, and devices which were lawfully erected under state law in force at the time of their erection, which were in existence on May 5, 1976, and which do not conform to the requirements of paragraphs (1) through (5) of Code Section 32-6-72 and paragraphs (1) through (3) of Code Section 32-6-73, where it can be demonstrated that such signs, displays, and devices (1) provide directional information about goods and services in the specific interest of the traveling public and (2) are such that removal would work a

substantial economic hardship in such defined area. (Ga. L. 1967, p. 423, § 1; Ga. L. 1971, Ex. Sess., p. 5, § 1; Code 1933, § 95A-913, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1979, p. 1086, § 1; Ga. L. 1980, p. 1017, § 1; Ga. L. 1996, p. 6, § 32.)

Law reviews. — For article, "Recommendations Regarding Control of Outdoor Advertising Along the Interstate Highway System in Georgia," see 14 Mercer L. Rev. 308 (1963).

For note, "Regulation and Ownership of the Marshlands: The Georgia Marshlands Act," see 5 Ga. L. Rev. 563 (1971).

For comment on State Hwy. Dep't v. Branch, 222 Ga. 770, 152 S.E.2d 372 (1966), discussing regulation of outdoor advertising and billboards as a constitutional "taking," see 18 Mercer L. Rev. 499 (1967).

JUDICIAL DECISIONS

Constitutionality. — The 1983 Constitution carried forward power exclusively in the counties and municipalities from former constitutional provisions; the Outdoor Advertising Act, O.C.G.A. § 32-6-70, does not conflict with Ga. Const. 1983, Art. IX, Sec. II, Para. IV. Patrick v. Head, 262 Ga. 654, 424 S.E.2d 615 (1993).

Owner had to be in compliance with then-existing ordinance. — Property owner did not have a vested right to erect a sign because the sign had not been erected in accordance with zoning regulations in force when the owner applied for the permit; accordingly, the owner's failure to comply with the permit rendered the owner outside of the scope of protection afforded by Ga. Const. 1983, Art. IX, Sec. II, Para. IV. Although the Outdoor Advertising Control Act, O.C.G.A. § 32-6-70, also afforded protections, such protection was again not applicable to the property owner because the owner had not erected the owner's sign in compliance with the legal requirements of the exist-

ing ordinances; accordingly, the owner had no property rights in the sign. DeKalb County v. DRS Invs., Inc., 260 Ga. App. 225, 581 S.E.2d 573 (2003).

Outdoor advertising. — O.C.G.A. § 32-6-70, in no uncertain terms, delegated the regulation of outdoor advertising to the Georgia Department of Transportation (DOT) as the statute provided in part that it was the intention of the General Assembly to provide a statutory basis for the regulation of outdoor advertising, such basis to be consistent with the public policy relating to areas adjacent to roads of the state highway system, under § 32-6-70(a), and O.C.G.A. § 32-6-90 further authorized the DOT to promulgate regulations governing permits for outdoor advertising. Walker v. DOT, 279 Ga. App. 287, 630 S.E.2d 878 (2006).

Cited in Moreton Rolleston, Jr. Living Trust v. DOT, 242 Ga. App. 835, 531 S.E.2d 719 (2000); Fulton County v. Action Outdoor Adver., JV, LLC, 289 Ga. 347, 711 S.E.2d 682 (2011).

RESEARCH REFERENCES

Am. Jur. 2d. — 3 Am. Jur. 2d, Advertising, §§ 2, 6, 22, 23. 40 Am. Jur. 2d, Highways, Streets, and Bridges, § 324.

Am. Jur. Proof of Facts. — Outdoor Advertising Sign or Billboard as Nuisance, 37 POF2d 141.

ALR. — Nature and extent of right granted by contract for use of wall or roof for advertising purposes, 10 ALR 1108; 119 ALR 1523.

Advertising rights on leased premises, 22 ALR 800; 20 ALR2d 940.

Constitutional power to regulate outdoor and street car advertising, 79 ALR 551.

Power of highway officer in respect of billboards or other conditions on adjoining property which are deemed dangerous to travel or offensive esthetically to travelers, 81 ALR 1547.

Validity and construction of statute or ordinance relating to distribution of advertising matter, 114 ALR 1446.

Validity and construction of state or

local regulation prohibiting the erection or maintenance of advertising structures within a specified distance of street or highway, 81 ALR3d 564.

32-6-71. Definitions.

As used in this part, the term:

(1) "Defined area" means any area or areas within the state defined by the board, upon request made by the State Department of Transportation and approved by the United States Secretary of Transportation, to be an area where the removal of directional signs, displays, and devices which were lawfully erected under state law in force at the time of their erection, which were in existence on May 5, 1976, and which do not conform to the requirements of paragraphs (1) through (5) of Code Section 32-6-72 and paragraphs (1) through (3) of Code Section 32-6-73 would deprive the traveling public of directional information about goods and services in the specific interest of the traveling public and would work a substantial economic hardship in such defined area or areas.

(2) "Directional and other official signs and notices" means only official signs and notices, public utility signs, service club and religious notices, public service signs, and directional signs.

(3) "Directional signs" means signs containing directional information deemed to be in the interest of the traveling public, including information about public places owned or operated by state, federal, or local governments or their agencies; publicly or privately owned natural phenomena; historic, cultural, scientific, educational, and religious sites; and areas of natural scenic beauty or areas naturally suited for outdoor recreation.

(4) "Directional signs, displays, and devices in the specific interest of the traveling public" means any directional sign, display, or device which was lawfully erected under state law in force at the time of its erection, which was in existence on May 5, 1976, and which provides directional information about goods and services in the specific interest of the traveling public but does not conform to the requirements of paragraphs (1) through (5) of Code Section 32-6-72 and paragraphs (1) through (3) of Code Section 32-6-73.

(5) "Erect" means to construct, build, raise, assemble, place, affix, attach, create, paint, draw, or in any other way bring into being or establish, but it shall not include any of the foregoing activities when performed as an incident to the change of advertising message or the normal maintenance or repair of a sign structure.

(6) "Illegal sign" means:

(A) A sign for the maintenance of which a permit is required under this part, or any amendment thereof, which sign is being maintained without a permit;

(B) A sign presently being maintained without a required permit even though it could have been permitted under any outdoor advertising control law in effect at the time of its erection;

(C) A sign presently being maintained without a permit, which sign could not have been permitted under the law in effect at the time of its erection even though the sign may meet the requirements of this part for the issuance of a permit;

(D) A sign on which the permit has been revoked pursuant to this part;

(E) A sign on which a nonconforming application for permit was denied and the denial has become final; and

(F) A nonconforming sign for which no permit was sought as required by Code Section 32-6-79.

(7) "Industrial or commercial activity" means those activities commonly or generally recognized as commercial or industrial except that none of the following activities shall be considered commercial or industrial:

(A) Outdoor advertising structures;

(B) Agricultural, forestry, ranching, grazing, farming, and related activities, including but not limited to wayside fresh produce stands;

(C) Transient or temporary activities;

(D) Activities within 660 feet of the nearest edge of the right of way which from the main traveled way are not visible and are not recognizable as being commercial or industrial activities;

(E) Activities more than 660 feet from the nearest edge of the right of way;

(F) Activities conducted in a building principally used as a residence; and

(G) Railroad tracks and minor sidings.

(8) "Information center" means an area or site established and maintained at a safety rest area for the purpose of informing the public of places of interest within the state and providing such other information as the department may consider desirable.

(9) "Interstate system" or "interstate highway" means any road of the state highway system which is a portion of The Dwight D.

Eisenhower System of Interstate and Defense Highways located within this state, as officially designated or as may hereafter be so designated by the department and approved by the United States Secretary of Transportation pursuant to the provisions of Title 23, Section 103, United States Code, or any limited-access highway as officially designated or as may hereafter be so designated by the department and approved by the United States Secretary of Transportation pursuant to the provisions of Title 23, Section 103, United States Code.

(10) "Maintain" means to allow to exist.

(11) "Main traveled way" means the traveled way of a highway on which through traffic is carried; and, in the case of a divided highway, it means the traveled way of each of the separated roadways for traffic traveling in opposite directions. It does not include such facilities as frontage roads, turning roadways, or parking areas.

(11.1) "Multiple message sign" means a sign, display, or device which changes the message or copy on the sign electronically by movement or rotation of panels or slats.

(12) "Nonconforming sign" means a sign which was lawfully erected but which does not comply with state law or state regulations due to changes in state law or changes in rules and regulations since the date of erection of the sign.

(13) "Official signs and notices" means signs and notices erected and maintained by public officers or public agencies within their territorial or zoning jurisdiction and pursuant to and in accordance with direction or authorization contained in state, federal, or local law for the purpose of carrying out an official duty or responsibility. Historical markers authorized by state law and erected by state or local government agencies or nonprofit historical societies shall be considered official signs.

(14) "Outdoor advertising" or "sign" means any outdoor sign, light, display, device, figure, painting, drawing, message, placard, poster, billboard, or other thing which is designed, intended, or used to advertise or inform, any part of the advertising or information contents of which are visible from any place on the main traveled way of the interstate or primary highway systems.

(15) "Parkland" means any publicly owned land which is designated or used as a public park, recreation area, wildlife or waterfowl refuge, or historic site.

(16) "Primary system" or "primary highway" means the federal-aid primary system in existence on June 1, 1991, and any highway which is not on such system, but which is on the National Highway System,

as officially designated or as may hereafter be so designated by the department and approved by the United States Secretary of Transportation pursuant to the provisions of Title 23, Section 103, United States Code.

(17) "Private" shall not mean, through the effect of this part, publicly owned property leased to others.

(18) "Public service signs" means signs located on school bus stop shelters, which signs identify the donor, sponsor, or contributor of said shelters and which contain safety slogans or messages which occupy not less than 60 percent of the sign area.

(19) "Public utility signs" means warning signs, informational signs, notices, or markers which are customarily erected and maintained by publicly or privately owned public utilities as essential to their operations.

(20) "Safety rest area" or "rest area" means an area or site established and maintained within or adjacent to the highway right of way, by or under public supervision or control, for the convenience of the traveling public.

(21) "Scenic area" means any area of particular scenic beauty or historical significance, as determined by the state, federal, or local officials having jurisdiction thereof, and includes interests in land which have been acquired for the restoration, preservation, and enhancement of scenic beauty.

(22) "Service club and religious notices" means signs or notices, whose erection is authorized by law, relating to religious services or to meetings of nonprofit service clubs or charitable associations, which signs do not exceed eight square feet in area.

(23) "Specific interest of the traveling public" means information regarding places offering lodging, food, motor vehicle fuels and lubricants, motor vehicle service and repair facilities, or any other service or product available to the general public, including, but not limited to, publicly or privately owned natural phenomena; historic, cultural, scientific, educational, or religious sites; and areas of natural scenic beauty or areas naturally suited for outdoor recreation.

(24) "Traveled way" means the portion of a roadway used for the movement of vehicles, exclusive of shoulders.

(25) "Unzoned commercial or industrial areas" means those areas which are not zoned by state law or local ordinance and on which there is located one or more permanent structures devoted to an industrial or commercial activity or on which an industrial or

commercial activity is actually conducted, whether or not a permanent structure is located thereon, and the area along the highway extending outward 600 feet from and beyond the edge of the activity in each direction and a corresponding zone directly across a primary highway which is not also a limited-access highway, when the same is not a public park, public playground, public recreational area, public forest, parkland, scenic area, cemetery, primarily residential, or locally zoned. All measurements shall be from the outer edges of the regularly used buildings, parking lots, or storage, processing, or landscaped areas of the commercial or industrial activity and not from the property lines of the activity and shall be along or parallel to the edge of the pavement of the highway.

(26) "Urban area" means an area included within the boundaries of an incorporated municipality having a population of 5,000 or more as determined by the latest available federal census and any area adjacent to such municipality, provided that such adjacent area is included within boundaries presently designated and fixed by the outdoor advertising urban area boundary maps and written records attached thereto on file in the office of the treasurer of the Department of Transportation.

(27) "Visible" means capable of being seen (whether or not legible) without visual aid by a person of normal visual acuity.

(28) "Would work a substantial economic hardship" means having the potential to cause a substantial negative economic effect in a defined area or areas, as may be demonstrated by a projected reduction in gross business sales, state and local sales taxes, and employment opportunities within the defined area or areas.

(29) "Zoned commercial or industrial areas" means those areas which are zoned for industrial or commercial activities pursuant to state or local zoning laws or ordinances as part of a comprehensive zoning plan. Strip zoning shall not be considered as a bona fide comprehensive zoning plan. Comprehensive zoning plans for the purposes of outdoor advertising only shall be approved by the board when an application for a permit has been made. (Ga. L. 1967, p. 423, § 2; Ga. L. 1971, Ex. Sess., p. 5, § 2; Code 1933, § 95A-914, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1974, p. 1422, §§ 22, 23; Ga. L. 1977, p. 263, § 1; Ga. L. 1979, p. 1086, § 2; Ga. L. 1980, p. 1017, §§ 2, 3; Ga. L. 1982, p. 3, § 32; Ga. L. 1996, p. 1052, §§ 1, 2; Ga. L. 2000, p. 136, § 32; Ga. L. 2005, p. 601, § 4/SB 160.)

Law reviews. — For annual survey of administrative law, see 38 Mercer L. Rev. 17 (1986).

JUDICIAL DECISIONS

Sign restriction at freeway entrance ramps. — Freeway has one “main traveled way” and signs may not be permitted within 500 feet of an entrance ramp even though such ramp is on the other side of a divided four-lane highway. *Department of Transp. v. Spells Sign Co.*, 141 Ga. App. 350, 233 S.E.2d 435 (1977).

Rest areas. — Recreational Property Act (RPA), O.C.G.A. § 51-3-20 et seq., applies to rest areas maintained by the Georgia Department of Transportation (DOT), and the DOT was entitled to summary judgment as a matter of law with regard to a visitor’s premises liability and negligence suit against the DOT resulting from the visitor’s trip and fall while attempting to place garbage in a trash can at a rest area because the DOT was immune from liability as a result of the application of the RPA and the visitor failed to show that the DOT was wilful or wanton in DOT’s placement of DOT’s trash can or that DOT charged money for the use of DOT rest areas. *Ga. DOT v. Thompson*, 270 Ga. App. 265, 606 S.E.2d 323 (2004).

Welcome center where a traveler was injured was recreational and was a rest area, and thus the department which owned the welcome center was immune from liability. *Matheson v. Ga. DOT*, 280 Ga. App. 192, 633 S.E.2d 569 (2006).

Strip zoning. — Denial of the request of landowners and a sign company for permits to erect outdoor advertising did not violate statutory authority, under O.C.G.A. §§ 32-6-71(29) and 32-6-72(4), which allowed such advertising on commercially zoned property but provided that strip zoned property was not properly considered commercially zoned, or *Ga. Comp. R. & Regs. 672-6-.01(q)* (1988), defining strip zoning, because: (1) the land on which the advertising would be erected was small in comparison to the owners’ total property; (2) was rezoned to commercial use, a use less restrictive than surrounding property; (3) rezoning did not regard the neighborhood’s character, as there was no commercial activity in the immediate vicinity; and (4) rezoning a small parcel to a less restrictive use out of character with surrounding land benefited only the parcel’s owners. *Walker v. DOT*, 279 Ga. App. 287, 630 S.E.2d 878 (2006).

Cited in *Department of Transp. v. Sapp Outdoor Adv. Co.*, 171 Ga. App. 228, 319 S.E.2d 87 (1984); *Ledford v. Department of Transp.*, 253 Ga. 717, 324 S.E.2d 470 (1985); *Moreton Rolleston, Jr. Living Trust v. DOT*, 242 Ga. App. 835, 531 S.E.2d 719 (2000).

OPINIONS OF THE ATTORNEY GENERAL

Issuance of permits for outdoor advertising devices. — Outdoor advertising devices located in areas zoned by local governments and subject to regulation by the department can be lawfully erected and maintained only in areas zoned, without further action of the local governing body, for commercial or industrial activities. 1975 Op. Att’y Gen. No. 75-24.

Renewal of permits. — If there are activities permitted in the district which are commonly and generally recognized as commercial, then the permits for outdoor advertising devices may be renewed provided the criteria for renewal established elsewhere are met. 1975 Op. Att’y Gen. No. 75-24.

RESEARCH REFERENCES

ALR. — Building regulations as applicable to billboards and similar structures, 60 ALR 1158.

Validity and construction of zoning regulations relating to illuminated signs, 30 ALR5th 549.

32-6-72. Designation of outdoor advertising which may be erected or maintained within 660 feet of nearest edge of right of way.

No outdoor advertising shall be erected or maintained within 660 feet of the nearest edge of the right of way and visible from the main traveled way of the interstate or primary highways in this state, except the following:

- (1) Directional and other official signs and notices;
- (2) Signs advertising the sale or lease of the property upon which they are located;
- (3) Signs advertising activities conducted or maintained within 100 feet of the nearest part of the activity as the dimensions of said activity are determined by department regulations, which regulations need not take into consideration the property lines of said activity;
- (4) Signs located in areas zoned commercial or industrial, which signs provide information in the specific interest of the traveling public;
- (5) Signs located in unzoned commercial or industrial areas, which signs provide information in the specific interest of the traveling public; and
- (6) Directional signs, displays, and devices about goods and services in the specific interest of the traveling public located in a defined area or areas approved by the United States Secretary of Transportation. (Ga. L. 1967, p. 423, § 3; Ga. L. 1971, Ex. Sess., p. 5, § 3; Code 1933, § 95A-915, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1979, p. 1086, § 3.)

Code Commission notes. — Pursuant to Code Section 28-9-5, a comma was deleted between “public” and “located” in paragraph (6).

JUDICIAL DECISIONS

Editor’s notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 95-2003(a), which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section.

Signs prohibited near interstate even if primary roads intervene. — This clear legislative proscription cannot be thwarted by the mere fact that other roads, even “primary roads,” intervene be-

tween the sign and the interstate highway. *Turner Communications Corp. v. Georgia Dep’t of Transp.*, 139 Ga. App. 436, 228 S.E.2d 399 (1976).

State’s police power to zone against future use without compensation. — Police power of the state to zone property to prevent the property’s use for certain purposes in the future, as distinguished from the taking or damaging in respect to a use already in existence, is not open to question, and does not require the pay-

ment of any compensation. National Adv. Co. v. State Hwy. Dep't, 230 Ga. 119, 195 S.E.2d 895 (1973).

Strip zoning. — Denial of the request of landowners and a sign company for permits to erect outdoor advertising did not violate statutory authority, under O.C.G.A. §§ 32-6-71(29) and 32-6-72(4), which allowed such advertising on commercially zoned property but provided that strip zoned property was not properly considered commercially zoned, or Ga. Comp. R. & Regs. 672-6-.01(q) (1988), defining strip zoning, because: (1) the land on which the advertising would be erected was small in comparison to the owners' total property; (2) was rezoned to commercial use, a use less restrictive than surrounding property; (3) rezoning did not regard the neighborhood's character, as there was no commercial activity in the immediate vicinity; and (4) rezoning a small parcel to a less restrictive use out of character with surrounding land benefited only the parcel's owners. Walker v. DOT, 279 Ga. App. 287, 630 S.E.2d 878 (2006).

Cited in Charles v. Cobb County, 231 Ga. 696, 203 S.E.2d 503 (1974); Department of Transp. v. El Carlo Motel, Inc., 140 Ga. App. 779, 232 S.E.2d 126 (1976); State v. Cafe Erotica, Inc., 270 Ga. 97, 507 S.E.2d 732 (1998).

OPINIONS OF THE ATTORNEY GENERAL

Issuance of permits for outdoor advertising devices. — Outdoor advertising devices located in areas zoned by local governments and subject to regulation by the department can be lawfully erected

and maintained only in areas zoned, without further action of the local governing body, for commercial or industrial activities. 1975 Op. Att'y Gen. No. 75-24.

RESEARCH REFERENCES

ALR. — Building regulations as applicable to billboards and similar structures, 60 ALR 1158.

Municipality's power to permit private owner to construct building or structure overhanging or crossing the air space above public street or sidewalk, 76 ALR2d 896.

Validity and construction of provision prohibiting or regulating advertising sign overhanging street or sidewalk, 80 ALR3d 687.

Validity and construction of statute or ordinance restricting outdoor rate advertising by motels, motor courts, and the like, 80 ALR3d 740.

Validity and construction of state or local regulation prohibiting the erection or maintenance of advertising structures within a specified distance of street or highway, 81 ALR3d 564.

32-6-73. Designation of outdoor advertising which may be erected or maintained beyond 660 feet of nearest edge of right of way.

No outdoor advertising shall be erected or maintained beyond 660 feet of the nearest edge of the right of way of the interstate or primary highways in this state outside of urban areas so as to be visible and intended to be read from the main traveled way, except the following:

- (1) Directional and other official signs and notices;
- (2) Signs advertising the sale or lease of the property upon which they are located;

(3) Signs advertising activities conducted or maintained within 100 feet from the nearest part of the activity as the dimensions of said activity are determined by department regulations, which regulations need not take into consideration the property lines of said activity; and

(4) Directional signs, displays, and devices about goods and services in the specific interest of the traveling public located in a defined area or areas approved by the United States Secretary of Transportation. (Code 1933, § 95A-915.1, enacted by Ga. L. 1977, p. 263, § 2; Ga. L. 1979, p. 1086, § 4.)

Code Commission notes. — Pursuant to Code Section 28-9-5, a comma was deleted between “public” and “located” in paragraph (4).

RESEARCH REFERENCES

ALR. — Building regulations as applicable to billboards and similar structures, 60 ALR 1158.

Municipality's power to permit private owner to construct building or structure overhanging or crossing the air space above public street or sidewalk, 76 ALR2d 896.

Validity and construction of state or local regulation prohibiting the erection or maintenance of advertising structures within a specified distance of street or highway, 81 ALR3d 564.

32-6-74. Applications for permits generally; fees; renewals; transfer of permits.

(a) Applications for permits authorized by subsections (a) through (d) of Code Section 32-6-79 shall be made to the department upon forms prescribed by the department. The applications shall contain the signature of the applicant and such other information as may be required by the department and shall be verified under oath by the person, firm, or corporation making the application. Permits and renewals thereof shall be issued for and shall be valid only if the sign is erected and maintained in accordance with this part during the 12 month period next following the date of issuance. As to permits for the initial erection of an outdoor advertising sign, one 12 month extension may be granted so long as a written request is submitted to the department at least 30 days prior to expiration along with a fee of \$35.00. Any denial of an extension request shall be sent to the applicant before the expiration date and shall state the basis for denial. Multiple extensions shall not be granted as to the same permit, and the applicant shall not be allowed to reapply for the same site until the extension has expired; however, modifications to the application which do not extend the term of the permit shall be allowed. There shall be an initial outdoor advertising permit fee and an annual renewal fee. On and after July 1, 2011, the outdoor advertising application fee shall be \$300.00, and the

renewal fee for each sign shall be \$85.00. The department may adjust future application and renewal fees through the formal rule making process so long as notice of any proposed increase is sent to the House and Senate Transportation Committees at least 30 days prior to final adoption by the department. Such fees shall be limited to amounts sufficient to offset the administrative costs to the department. An annual report on the expenditures and revenues of the department related to the outdoor advertising program shall be sent to the House and Senate Transportation Committees no later than October 31 of each year. Upon receipt of a properly executed application and the appropriate fee for the erection or maintenance of a sign which may be lawfully erected or maintained pursuant to this part, the department shall, within 60 days, issue a permit authorizing the erection or maintenance, or both, of the sign for which application was made except when a person, firm, or corporation is maintaining or allowing the maintenance of an illegal sign as provided for in subsection (f) of Code Section 32-6-79. All outdoor advertising permits and renewals shall expire on the first day of April in the year following issuance. Renewal of such permits shall be made to the department between January 1 and April 1 of each calendar year. Notice of such renewal period shall be mailed to each outdoor advertising permit holder along with an itemized list of all permits maintained by such person or entity in the month of December. In response, each permit holder should clearly indicate any permits not being renewed and return a copy to the department along with payment for all permits being renewed. If a permit holder believes the itemized list is incomplete or inaccurate, such permit holder shall clearly note such discrepancies on the list and return a copy to the department with supporting documentation. The permit holder shall submit the renewal and any suggested corrections within 60 days of the date of the department notice or by April 1, whichever occurs last. If the department fails to receive the renewal before the expiration date, the department shall notify the permit holder by certified mail that the renewal is overdue and shall give the permit holder 45 days from the date of the postmark on such notice to send the department the renewal. If the applicant does not send the permit renewal and fee within 45 days after the postmark date on such notice, the permit shall expire and the sign shall then become an illegal sign. Signs shall become illegal by operation of law after the expiration of the permit followed by notice to the permit holder and a failure to submit for the renewal within 45 days. Any illegal sign may be removed without any administrative proceeding before the department. Vegetation permits or renewals issued pursuant to Code Section 32-6-75.3 shall expire on the first day of September in the year following issuance. If a vegetation permit renewal application and fee is not timely submitted and such deficiency is not cured within 45 days of the postmark date of notice via certified mail from the department, the

vegetation permit shall be canceled, but the sign shall not be deemed illegal. No permit shall be renewed if the renewal thereof has not been made in accordance with this Code section.

(b) Permits shall be transferable. An application to have the permit specified in subsection (a) of this Code section transferred shall be made within 30 days of the change in ownership of the sign; shall be made to the department upon forms prescribed by the department; shall contain the signature of the applicant and such other information as may be required by the department; and shall be verified under oath by the person, firm, or corporation making application for transfer. Failure to comply in a timely and proper manner with this subsection shall be grounds for revocation of the permit. (Ga. L. 1971, Ex. Sess., p. 5, § 10; Code 1933, § 95A-922, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1974, p. 1422, § 32; Ga. L. 1976, p. 1508, § 1; Ga. L. 1980, p. 1017, § 6; Ga. L. 2011, p. 601, § 1/HB 179.)

The 2011 amendment, effective July 1, 2011, substituted the present provisions of subsection (a) for the former provisions, which read: "Applications for permits and the renewal thereof authorized by subsections (a) through (d) of Code Section 32-6-79 shall be made to the department upon forms prescribed by the department. The applications shall contain the signature of the applicant and such other information as may be required by the department and shall be verified under oath by the person, firm, or corporation making the application. Permits and renewals thereof shall be issued for and shall be valid only if the sign is erected and maintained in accordance with this part during the 12 month period next following the date of issuance. The fee for the initial issuance of a permit shall be \$50.00. The fee for the renewal of a permit shall be \$25.00. The money received from permit fees shall be used to help defray the expenses of administering this part, Code Section 48-2-17 to the contrary notwithstanding. Upon receipt of a properly executed application and the appropriate fee for the erection or maintenance of a sign which may be lawfully erected or maintained pursuant to this part, the department shall, within 60 days, issue a permit or renewal authorizing the erection or maintenance, or both, of the sign for which application was made except when a person, firm, or corporation is maintaining or allowing the maintenance

of an illegal sign as provided for in subsection (f) of Code Section 32-6-79. Application for the renewal of a permit shall be made to the department not more than 90 nor less than 60 days before the expiration date of the permit for which renewal is sought. If the department fails to receive the renewal application before the expiration date of the permit, the department will notify the applicant that the renewal application is overdue when the applicant's address is known or reasonably available to the department and shall give the applicant 30 days after the expiration date to send the department the renewal application. If the applicant does not send the properly executed application and the appropriate fee within the specified 30 day period, the sign shall then become an illegal sign. No permit shall be renewed if the application for the renewal thereof has not been made in accordance with this Code section."

Editor's notes. — Ga. L. 2011, p. 601, § 4/HB 179, not codified by the General Assembly, provides: "The Department of Transportation shall have 120 days from the effective date to promulgate any forms or policies necessary to implement this Act. Those applications submitted before any necessary forms and policies are in place shall be processed in accordance with the regulations in place prior to the effective date. Those holding vegetation maintenance permits or renewals issued at any time prior to the promulgation of

the necessary forms and policies shall, upon written request to the department, be able to trim or remove vegetation in accordance with the terms of this Act." This Act became effective July 1, 2011.

Law reviews. — For article on the

2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 91 (2011). For article, "Highways, Bridges, and Ferries: Regulation of Maintenance and Use of Public Roads Generally," see 28 Ga. St. U.L. Rev. 91 (2011).

JUDICIAL DECISIONS

Denial of sign permits. — Although ground had not been broken on a proposed interchange as of the date an applicant submitted applications for permits for outdoor advertising signs, the Georgia Department of Transportation's denial of the applications comported with O.C.G.A. §§ 32-1-2, 32-6-74(a), and 32-6-75(a)(18)

because the interchange project had progressed to a point such that it constituted an interchange for purposes of § 32-6-75(a)(18) and the proposed sign locations were within the 500-foot blocked out zone established by § 32-6-75(a)(18). *Eagle West, LLC v. Ga. DOT*, 312 Ga. App. 882, 720 S.E.2d 317 (2011).

OPINIONS OF THE ATTORNEY GENERAL

Issuance of permits for outdoor advertising devices. — Outdoor advertising devices located in areas zoned by local governments and subject to regulation by the department can be lawfully erected and maintained only in areas zoned, without further action of the local governing body, for commercial or industrial activities. 1975 Op. Att'y Gen. No. 75-24.

When issuing permits for outdoor advertising devices, the Department of Transportation must be guided by Ga. L.

1973, p. 947, § 1 et seq., notwithstanding the local zoning ordinances. 1975 Op. Att'y Gen. No. 75-24.

Department of Transportation may issue permits for outdoor advertising devices, and renew such permits, within "Forest-Agricultural" Districts of Glynn County if the department commonly and generally recognizes the activities permitted therein as commercial or industrial. 1975 Op. Att'y Gen. No. 75-24.

32-6-75. Restrictions on outdoor advertising authorized by Code Sections 32-6-72 and 32-6-73; multiple message signs on interstate system, primary highways, and other highways.

(a) No sign authorized by paragraphs (4) through (6) of Code Section 32-6-72 and paragraph (4) of Code Section 32-6-73 shall be erected or maintained which:

(1) Advertises an activity that is illegal under Georgia or federal laws or regulations in effect at the location of such sign or at the location of such activity;

(2) Is obsolete;

(3) Is not structurally safe, clean, and in good repair;

(4) Is not securely affixed to a substantial structure which is permanently attached to the ground;

(5) Is attached to, drawn, or painted upon trees, rocks, or other natural features;

(6) Moves or has any moving or animated parts, except as expressly allowed under subsection (c) of this Code section;

(7) Emits or utilizes in any manner any sound capable of being detected on the main traveled way by a person with normal hearing;

(8) If illuminated, contains, includes, or is illuminated by any flashing, intermittent, or moving light or lights except those giving public service information such as time, date, temperature, weather, or other similar information except as expressly permitted under subsection (c) of this Code section. The illumination of mechanical multiple message signs is not illumination by flashing, intermittent, or moving light or lights, except that no multiple message sign may include any illumination which is flashing, intermittent, or moving when the sign is in a fixed position;

(9) If illuminated, is not effectively shielded so as to prevent beams or rays of light from being directed at any portion of the traveled way, which beams or rays are of such intensity or brilliance as to cause glare or to impair the vision of the driver of any motor vehicle or which otherwise interfere with the operation of a motor vehicle;

(10) If illuminated, is illuminated so that it obscures or interferes with the effectiveness of an official traffic sign, device, or signal;

(11) Contains an area, to be measured by the smallest square, rectangle, triangle, circle, or combination thereof, which encompasses the entire sign, in excess of 1,200 square feet or exceeding 30 feet in height or 60 feet in length, inclusive of any border and trim but excluding the base, apron, supports, and other structural members; provided, however, that, in counties having a population greater than 500,000 according to the United States decennial census for 1970 or any such future census, the maximum size of 1,200 square feet, the maximum height of 30 feet, and the maximum length of 60 feet may be exceeded, but in no event shall any such sign exceed 3,000 square feet; provided, further, that no such oversize signs shall be erected after July 1, 1973;

(12) Contains more than two faces visible from the same direction on the main traveled way; provided, however, that after July 1, 2006, no sign shall be erected that contains more than one face vertically stacked visible from the same direction on the main traveled way. Double-faced, back-to-back, and V-type constructed signs shall, for the purpose of determining compliance with size and spacing limitations, be considered as one sign;

(13) Is in an area not zoned for commercial or industrial activity and within 300 feet of a residence without the written consent of the owner;

(14) Is within 500 feet in any direction of a public park, public playground, public recreation area, public forest, scenic area, or cemetery; provided, however, that such sign may be located within 500 feet of a public park, public playground, public recreation area, public forest, scenic area, or cemetery when the sign is separated by buildings or other obstructions so that the sign located within the 500 foot zone is not visible from the public park, public playground, public recreation area, public forest, scenic area, or cemetery;

(15) Is located so as to obscure or otherwise interfere with the effectiveness of an official traffic sign, signal, or device;

(16) Is located so as to obscure or otherwise interfere with a motor vehicle operator's view of approaching, merging, or intersecting traffic;

(17) Is located adjacent to an interstate highway and which is within 500 feet of another sign on the same side of the highway; provided, however, that such sign may be located within 500 feet of another sign when the signs are separated by buildings or other obstructions so that only one sign face located within the 500 foot zone is visible from the interstate highway at any time;

(18) Is located outside of the corporate limits of a municipality and adjacent to an interstate highway within 500 feet of an interchange, intersection at grade, or safety rest area. The foregoing 500 foot zone shall be measured along the interstate highway from the point at which the pavement commences or ceases to widen at exits from or entrances to the main traveled way. In circumstances where both the exit and entrance ramps on one side of an interchange constitute continuous lanes of travel to the exit and entrance ramps of the adjacent interchange, this side of the interchange shall be treated as if no ramps exist and the foregoing 500 foot zone on this side of the interchange shall be measured from the survey centerline of the main traveled way and crossroad forming the interchange or intersecting road. In all circumstances where this definition conflicts with any agreement with the United States secretary of transportation pursuant to Code Section 32-6-87, said agreement shall be deemed to control for purposes of this Code section;

(19) Is located outside of the corporate limits of a municipality and adjacent to a highway on the primary system and which is within 300 feet of another sign on the same side of the highway; provided, however, that such sign may be located within 300 feet of another sign when the signs are separated by buildings or other obstructions

so that only one sign face located within the 300 foot zone is visible from the primary system highway at any one time;

(20) Is located within the corporate limits of a municipality and adjacent to a highway on the primary system and which is within 100 feet of another sign on the same side of the highway; provided, however, that such sign may be located within 100 feet of another sign when the signs are separated by buildings or other obstructions so that only one sign face located within the 100 foot zone is visible from the primary system highway at any one time; or

(21) Depicts any material which is obscene as such term is defined in Code Section 16-12-80.

(b) Reserved.

(c)(1) Multiple message signs shall be permitted on the interstate system, primary highways, and other highways under the following conditions:

(A) Each multiple message sign shall remain fixed for at least ten seconds;

(B) When a message is changed mechanically, it shall be accomplished in three seconds or less;

(C) No such multiple message sign shall be placed within 5,000 feet of another mechanical multiple message sign on the same side of the highway;

(D) Any such sign shall contain a default design that will freeze the sign in one position if a malfunction occurs;

(E) Any maximum size limitations shall apply independently to each side of a multiple message sign; and

(F) Nonmechanical electronic multiple message signs that are otherwise in compliance with this subsection and are illuminated entirely by the use of light emitting diodes, back lighting, or any other light source shall be permitted under the following circumstances:

(i) Each transitional change occurs within two seconds;

(ii) If the department finds an electronic sign or any display or effect thereon to cause glare or to impair the vision of the driver of any motor vehicle or to otherwise interfere with the safe operation of a motor vehicle, then, upon the department's request, the owner of the sign shall promptly and within not more than 48 hours reduce the intensity of the sign to a level acceptable to the department; and

(iii) The owner of any existing or nonconforming electronic sign shall have until October 31, 2006, to bring the electronic sign in compliance with this subparagraph and to request a permit from the department.

(2) If a multiple message sign on a primary highway or other highway is in violation of any of the above conditions, its permit shall be revoked and the sign shall be removed. During the appeal of any violations of paragraph (1) of this subsection, the sign shall remain fixed until the matter is resolved. The commissioner may allow the continued operation of a multiple message sign during part or all of the appeals process.

(3) After April 15, 1996, all persons, firms, or corporations who have signs that were illegal signs under previous law, but which are legal signs under the provisions of this subsection, shall have a one-year period during which time they shall be required to file an application for a permit issued by the department. Applications for such permits shall be made upon forms prescribed and provided by the department and shall contain the signature of the applicant and such other information as may be required by the department rules and regulations. The department shall have a period of 60 days from the date such an application is received to process it. If, at the end of this 60 day period, the department has failed to approve or deny an application in proper form, it shall be conclusively presumed for all purposes that the sign can be permitted and the department must issue the permit within a reasonable time. Should the department deny the application, the applicant may seek relief in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." In cases where the applicant fails to exhaust the procedures prescribed by Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," the department's denial of the permit request will be final and the sign shall then become an illegal sign as defined by paragraph (6) of Code Section 32-6-71 and shall be subject to removal under the terms of this part. If the owner of the sign fails to apply properly for a permit and it is conclusively presumed that the sign has been abandoned, the sign shall remain an illegal sign as defined by paragraph (6) of Code Section 32-6-71 and the sign shall be subject to removal under the terms of this part. (Ga. L. 1967, p. 423, §§ 3, 4, 6; Ga. L. 1971, Ex. Sess., p. 5, § 4; Code 1933, § 95A-916, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1974, p. 1422, §§ 25, 26, 27, 28, 30; Ga. L. 1980, p. 1017, § 4; Ga. L. 1996, p. 6, § 32; Ga. L. 1996, p. 831, § 1; Ga. L. 1996, p. 1052, § 3; Ga. L. 1998, p. 1132, § 1; Ga. L. 2006, p. 691, §§ 3-6/HB 1097.)

Cross references. — False advertising, § 10-1-420 et seq.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1991, a comma

was inserted following “flashing” in paragraph (a)(8).

Pursuant to Code Section 28-9-5, in 1996, subsection (b), which was added by Ga. L. 1996, p. 1052, § 3, was redesignated as subsection (c) in view of the fact that Ga. L. 1996, p. 831 also enacted a subsection (b). As a result, the reference in paragraph (a)(6) to “subsection (b)” was changed to be a reference to “subsection (c)”.

Pursuant to Code Section 28-9-5, in 1996, “April 15, 1996” was substituted for “the effective date of this subsection” in the first sentence of paragraph (c)(3).

Pursuant to Code Section 28-9-5, in 2006, “until October 31, 2006,” was substituted for “180 days from the effective date of this subparagraph” in division (c)(1)(F)(iii).

Editor’s notes. — Ga. L. 2006, p. 691, § 7/HB 1097, not codified by the General Assembly, provides for severability.

Law reviews. — For annual survey of law on administrative law, see 62 Mercer L. Rev. 1 (2010).

For review of 1996 highways, bridges, and ferries legislation, see 13 Ga. St. U.L. Rev. 180 (1996).

JUDICIAL DECISIONS

Constitutionality. — Subsection (b) of O.C.G.A. § 32-6-75 is an unconstitutional infringement on free speech as the statute’s absolute proscription against any form of off-site advertising impedes the free flow of information and far exceeds the state’s legitimate interest in preventing hazards to the traveling public. *State v. Cafe Erotica, Inc.*, 270 Ga. 97, 507 S.E.2d 732 (1998).

Proscription in subsection (b) of O.C.G.A. § 32-6-75 of “any outdoor advertising of a commercial establishment where nudity is exhibited” is not narrowly tailored to achieve the statute’s purpose of preventing hazards to the safety of the traveling public since the statute is not directed solely at provocative images, but prohibits even a worded sign advertising the location of a business. *State v. Cafe Erotica, Inc.*, 270 Ga. 97, 507 S.E.2d 732 (1998).

Purpose. — Purpose of this section is to regulate the impact of the signs on the driver along the interstate. *Turner Communications Corp. v. Georgia Dep’t of Transp.*, 139 Ga. App. 436, 228 S.E.2d 399 (1976) (see O.C.G.A. § 32-6-75).

Intent of the General Assembly is to protect the public traveling along the highway from distractions, aesthetic desecration, and nuisances, all associated with the proliferation of signs in a concentrated area along the highway. *Turner Communications Corp. v. Georgia Dep’t of Transp.*, 139 Ga. App. 436, 228 S.E.2d 399 (1976).

Minimization of distractions by signs in the area of an interchange is precisely the intent and purpose behind the blocked-out zone contemplated in paragraph (a)(18) of this section. *Department of Transp. v. Spells Sign Co.*, 141 Ga. App. 350, 233 S.E.2d 435 (1977); *National Adv. Co. v. Department of Transp.*, 149 Ga. App. 334, 254 S.E.2d 571 (1979) (see O.C.G.A. § 32-6-75).

Measurement of distances under paragraph (a)(18). — In requiring that all signs be located at least 500 feet apart, the legislative intent would require that the measurement be made along the highway. *Turner Communications Corp. v. Georgia Dep’t of Transp.*, 139 Ga. App. 436, 228 S.E.2d 399 (1976).

“Crow flies” method of measurement is not intended to apply to every statute omitting the method of measuring. Rather, each statute is to be construed individually in order to ascertain the method of measurement which best fulfills the legislative intent. *Turner Communications Corp. v. Georgia Dep’t of Transp.*, 139 Ga. App. 436, 228 S.E.2d 399 (1976).

Impact on motorist more important than exact interval between signs. — Distance requirement in this section for separation of signs is aimed at the impact on the traveling motorist, not at the literal distance between each sign. *Turner Communications Corp. v. Georgia Dep’t of Transp.*, 139 Ga. App. 436, 228 S.E.2d 399 (1976) (see O.C.G.A. § 32-6-75).

Paragraph (a)(18) applicable to “Y” and “half-diamond” interchanges. — Prohibition on signs within 500 feet of intersecting highways also applies in cases where the interchange is a “Y” or “half-diamond” type and the sign is to be located on the “no ramp” side of the interchange. *National Adv. Co. v. Department of Transp.*, 149 Ga. App. 334, 254 S.E.2d 571 (1979).

Proposed interchange project constituted an interchange. — Although ground had not been broken on a proposed interchange as of the date an applicant submitted applications for permits for outdoor advertising signs, the Georgia Department of Transportation’s denial of the applications comported with O.C.G.A. §§ 32-1-2, 32-6-74(a), and 32-6-75(a)(18) because the interchange project had progressed to a point such that it constituted an interchange for purposes of § 32-6-75(a)(18) and the proposed sign locations were within the 500-foot blocked out zone established by § 32-6-75(a)(18). *Eagle West, LLC v. Ga. DOT*, 312 Ga. App. 882, 720 S.E.2d 317 (2011).

Superior court failed to address basis for conclusions of the Georgia Department of Transportation. — Judgment reversing a decision of the Georgia

Department of Transportation overruling an administrative law judge’s finding that one owner had a valid multiple message permit for its sign and that a second owner’s application for a permit was properly denied was remanded because the superior court ignored the basis for the GDOT’s conclusion and reviewed the ALJ’s decision instead, and the findings and conclusions of the Deputy Commissioner of the GDOT pertaining to governmental restrictions on commercial speech did not properly address and resolve the issues; in its final agency decision, the Deputy Commissioner essentially side-stepped the issues the ALJ addressed and resolved and did not directly address the issue of whether, applying the applicable provisions and regulations, the first owner failed to make the necessary revisions to its sign, and the GDOT’s conclusion that allowing the first owner to keep its permit would be unduly restrictive was arbitrary and capricious. *Lamar Co., LLC v. Whiteway Neon-Ad*, 303 Ga. App. 495, 693 S.E.2d 848 (2010).

Cited in *Moreton Rolleston, Jr. Living Trust v. DOT*, 242 Ga. App. 835, 531 S.E.2d 719 (2000); *Lamar Co., L.L.C. v. City of Marietta*, 538 F. Supp. 2d 1366 (N.D. Ga. 2008).

OPINIONS OF THE ATTORNEY GENERAL

Abandonment of outdoor advertising device. — No outdoor advertising device in this state may be considered abandoned until there is an expression, either by judicial determination or some affirmative act on the part of the owner, that the owner of the device has relinquished all intent of ever again using the device. 1974 Op. Att’y Gen. No. 74-134.

Compensation for prohibited outdoor advertising device. — Lawfully erected outdoor advertising device which could not be permitted on March 28, 1974, or a device which cannot now be permitted because of changed conditions beyond the control of the owner, is due compensation. However, this rule applies only in the situation wherein there was a lawfully

erected outdoor advertising device and a second device was later erected and permitted in such proximity to the first that the first cannot now receive a permit because of the spacing requirements of this section. 1974 Op. Att’y Gen. No. 74-134 (see O.C.G.A. § 32-6-75).

Outdoor advertising sign facings. — Four outdoor advertising sign facings can be permitted at a given location. 1973 Op. Att’y Gen. No. 73-124.

Consent required for erection and maintenance of outdoor advertising sign. — Owners of all residences within 300 feet of outdoor advertising sign must first consent to the sign’s erection and maintenance. 1973 Op. Att’y Gen. No. 73-124.

RESEARCH REFERENCES

Am. Jur. 2d. — 3 Am. Jur. 2d, Advertising, §§ 23, 24.

C.J.S. — 66 C.J.S., Nuisances, § 38.

ALR. — Building regulations as applicable to billboards and similar structures, 60 ALR 1158.

Constitutional power to regulate outdoor and street car advertising, 79 ALR 551.

Validity and construction of provision

prohibiting or regulating advertising sign overhanging street or sidewalk, 80 ALR3d 687.

Validity and construction of statute or ordinance restricting outdoor rate advertising by motels, motor courts, and the like, 80 ALR3d 740.

Validity and construction of state or local regulation prohibiting off-premises advertising structures, 81 ALR3d 486.

32-6-75.1. Roadside Enhancement and Beautification Council; membership; purpose; compensation.

(a)(1) The Governor shall appoint a Roadside Enhancement and Beautification Council composed of 12 members. The council shall include the chairperson of the Senate Transportation Committee; the chairperson of the House Transportation Committee; a member from the Georgia Conservancy; a member from the Garden Clubs of Georgia, Inc.; a member of the faculty of the School of Environmental Design at the University of Georgia; a member from the Sierra Club; a member from the Georgia Wildlife Federation; four members of the Outdoor Advertising Association of Georgia, Inc.; and the deputy commissioner of the Georgia Department of Transportation or the designee thereof. The commissioner shall submit recommendations to the Governor for purposes of selecting members to the council.

(2)(A) Terms of those members representing the Georgia Conservancy, the Garden Clubs of Georgia, and the School of Environmental Design and of two of those members representing the Outdoor Advertising Association shall expire on January 1, 2001, and quadrennially thereafter. Such members may be appointed to successive terms.

(B) Terms of those members representing the Sierra Club and the Georgia Wildlife Federation and of two of those members representing the Outdoor Advertising Association shall expire on January 1, 2003, and quadrennially thereafter. Such members may be appointed to successive terms.

(3) A landscape architect employed by the department and designated by the commissioner shall serve as an adviser to the council.

(b) The council shall aid the commissioner in formulating policies and discussing problems related to the administration of this article. In addition, the council shall:

(1) Review, comment upon, and make recommendations to the commissioner on the standards and policies to be used in the

trimming and removal of vegetation on state rights of way in front of legally erected and maintained outdoor advertising signs;

(2) Make recommendations to the department regarding standards for vegetation removal and landscape and maintenance plans submitted by permittees including without limitation the use of viewing zones under Code Section 32-6-75.3;

(3) Review the performance of permittees holding current tree and vegetation trimming permits issued under Code Section 32-6-75.3 for compliance with the requirements of such permits including without limitation the implementation of landscaping plans;

(4) Encourage the contribution of funds from appropriate sources to support roadside enhancement and beautification;

(5) Submit to the commissioner annually not later than 30 days after the date of its fourth quarter meeting a written report of findings based upon its reviews of permittees' performances and recommendations including without limitation any recommendations for expenditures for roadside enhancement and beautification; and

(6) Perform such other functions as may be specified for the council by the department.

The council shall have full and complete access to all department records necessary for the performance of its duties.

(c) The council shall meet to elect a chairperson and vice chairperson and to establish the rules governing its operation. The advisory council shall meet at the call of the chairperson and shall meet not less than quarterly.

(d) Each councilmember shall be compensated at a rate per day the same as that rate per day provided by law for members of the General Assembly serving on interim committees and shall be reimbursed for any necessary expenses; provided, however, that any full-time state employee on the council shall draw no compensation but shall receive necessary expenses. The commissioner is authorized to pay such compensation and expenses from department funds. (Code 1933, § 95A-934.3, enacted by Ga. L. 1981, p. 955, § 2; Ga. L. 1985, p. 149, § 32; Ga. L. 1998, p. 1313, § 1; Ga. L. 2001, p. 4, § 32.)

Cross references. — Roadside enhancement and beautification fund, Ga. Const. 1983, Art. III, Sec. IX, Para. VI. Forest resources and other plant life generally, T. 12, C. 6.

Law reviews. — For review of 1998

legislation relating to highways, bridges, and ferries, see 15 Ga. St. U.L. Rev. 136 (1998). For article, "Highways, Bridges, and Ferries: Regulation of Maintenance and Use of Public Roads Generally," see 28 Ga. St. U.L. Rev. 91 (2011).

JUDICIAL DECISIONS

Regulations invalid. — Regulations adopted by the Department of Transportation to implement the program allowing the owners of private outdoor advertising to trim vegetation on public property blocking the owners' advertising did not comply with the statutory mandate that the Roadside Enhancement and Beautifi-

cation Council was to review and recommend such standards so the regulations were invalid. *Garden Club of Ga. v. Shackelford*, 274 Ga. 653, 560 S.E.2d 522 (2002).

Cited in *Outdoor Adv. Ass'n of Ga. v. Garden Club of Ga., Inc.*, 272 Ga. 146, 527 S.E.2d 856 (2000).

OPINIONS OF THE ATTORNEY GENERAL

Commissioner is authorized to initiate issuance of permits. — Commissioner is authorized, but not required, to initiate a program under which permits

may be issued for trimming trees and vegetation in connection with administration of laws regulating billboards. 1981 Op. Att'y Gen. No. 81-75.

32-6-75.2. Roadside Enhancement and Beautification Fund; dedication of certain revenues.

There is established a special fund to be known as the "Roadside Enhancement and Beautification Fund." This fund shall consist of all moneys collected under Code Section 32-6-75.3, any appropriations by the General Assembly to the fund, revenues derived from the sale of any special and distinctive wildflower motor vehicle license plates issued pursuant to paragraph (5) of subsection (1) of Code Section 40-2-86, any contributions to the fund from any other source, and all interest thereon. All moneys collected under Code Section 32-6-75.3 and fees for any special and distinctive wildflower motor vehicle license plates shall be paid into the fund. All balances in the fund shall be deposited in an interest-bearing account identifying the fund and shall be carried forward each year so that no part thereof may be deposited in the general treasury. The department shall administer the fund and expend moneys held in the fund in furtherance of roadside enhancement and beautification projects along public roads in this state and administration of the tree and vegetation trimming permit program under Code Section 32-6-75.3. In addition to the foregoing, the department may, without limitation, promote and solicit voluntary contributions, promote the sale of motor vehicle license tags authorized under paragraph (5) of subsection (1) of Code Section 40-2-86, and develop any fund raising or other promotional techniques deemed appropriate by the department. Contributions to the fund shall be deemed supplemental to and shall in no way supplant funding that would otherwise be appropriated for these purposes. The department shall prepare, by February 1 of each year, an accounting of the funds received and expended from the fund. The report shall be made available to the members of the State Transportation Board, the Senate Transportation Committee, the Transportation Committee of the House of Represen-

tatives, and to members of the public on request. (Code 1933, § 95A-934.4, enacted by Ga. L. 1981, p. 955, § 3; Ga. L. 1998, p. 1313, § 2; Ga. L. 1999, p. 81, § 32; Ga. L. 2001, p. 1021, § 1; Ga. L. 2010, p. 9, § 1-60/HB 1055.)

The 2010 amendment, effective May 12, 2010, substituted “paragraph (5) of subsection (1) of Code Section 40-2-86” for “Code Section 40-2-49.2” in the second and sixth sentences, and deleted “manufacturing” preceding “fees” in the third sentence.

Cross references. — Roadside enhancement and beautification fund, Ga. Const. 1983, Art. III, Sec. IX, Para. VI.

Editor’s notes. — The constitutional amendment (Ga. L. 1998, p. 1688) which authorized provisions of this Code section was approved by a majority of the qualified voters voting at the 1998 November general election.

OPINIONS OF THE ATTORNEY GENERAL

Commissioner is authorized to initiate issuance of permits. — Commissioner is authorized, but not required, to initiate a program under which permits may be issued for trimming trees and vegetation in connection with administration of laws regulating billboards. 1981 Op. Att’y Gen. No. 81-75.

Direct economic benefit from material severed from rights-of-way. — Neither O.C.G.A. § 32-6-75.2 nor O.C.G.A. § 32-6-75.3 authorizes any private person to derive any economic benefit

directly from disposition of material severed from rights-of-way. 1981 Op. Att’y Gen. No. 81-75.

No donation of constitutionally forbidden gratuity. — Cutting of trees and vegetation on rights-of-way, without cost or expense to taxpayers and to the extent no more than minimally necessary to facilitate reasonably adequate public viewing of privately owned billboards, does not itself amount to donation of constitutionally forbidden gratuity. 1981 Op. Att’y Gen. No. 81-75.

RESEARCH REFERENCES

ALR. — Governmental liability for compensation or damages to advertiser arising from obstruction of public view of

sign or billboard on account of growth of vegetation in public way, 21 ALR4th 1309.

32-6-75.3. Application for tree trimming permit and annual renewal; forms; application fees; evaluation; criteria for trimming trees or vegetation.

(a)(1) For purposes of this Code section, the term:

(A) “Removal” or “removed” means the elimination of trees or other vegetation from a viewing zone.

(B) “Target view zone” means an area of the viewing zone extending from the sign to the roadway to which the sign is permitted which shall be angled as requested by the applicant to maximize the visibility of the sign to passing motorists but not to exceed:

(i) Two-hundred and fifty feet along the right of way fence or boundary; and

(ii) Three-hundred and fifty feet along the pavement edge, to include any emergency lane or paved shoulder.

(C) "Trimming" or "trimmed" means the pruning of excess limbs or branches from trees or other vegetation which are not removed from a viewing zone.

(D) "Viewing zone" means a continuous 500 foot horizontal distance parallel to a state right of way and adjacent to or otherwise within the line of sight of an outdoor advertising sign.

(2) The General Assembly finds and declares that outdoor advertising provides a substantial service and benefit to Georgia and Georgia's citizens as well as the traveling public. Therefore, the General Assembly declares it to be in the public interest that provisions be made for the visibility of outdoor advertising signs legally erected and maintained along the highways in this state to provide information regarding places offering lodging, food, motor vehicle fuels and lubricants, motor service and repairs, or any other services or products available to the general public. Recognizing, however, that the beautification of this state and the health of its environment are absolutely essential and equally as important to the traveling public, the General Assembly finds and declares that these needs must be balanced.

(b)(1) So as to promote these objectives and in accordance with the provisions of this Code section, the commissioner shall provide by rule or regulation for the issuance and annual renewal of permits for the trimming and removal of trees and other vegetation on the state rights of way within viewing zones with respect to outdoor advertising signs legally erected and legally maintained adjacent to said rights of way. Such rules and regulations shall include, without limitation, standards for survival of vegetation trimmed or planted.

(2) So as to ensure that no vegetation maintenance permits are issued for the purpose of creating new outdoor advertising signs, no owner of outdoor advertising signs permitted or assigned a working number by the department after December 31, 2010, or such owner's agent, shall be eligible to make application for vegetation maintenance for a period of five years from the date a new sign is permitted.

(c) Application for a tree or vegetation trimming or removal permit and the annual renewal thereof shall be made upon the forms prescribed and provided by the department and shall contain the signature of the applicant and such other information as may be required by the department's rules and regulations.

(d) An application fee shall accompany the application for each vegetation maintenance permit, and both the application and fee shall be submitted to the department. There shall be an annual renewal of the permit for activities in the original scope of the permit. The department shall promulgate rules and regulations setting forth the application fees and renewal fees. Such application and renewal fees shall be established by the department in reasonable amounts in order to fully recover the costs of administering the vegetation maintenance program.

(e)(1) The department shall evaluate each application for a permit under this Code section and require as a condition of granting any permit under this Code section that the value of the landscaping to be either provided or paid for by the applicant is not less than the department's appraised value of the benefit to be conferred by the state upon the applicant by allowing the trimming or removing of trees or other vegetation as requested, which shall be the value of the trees or vegetation to be trimmed or removed; provided, however, that a permit may be granted to an otherwise qualified applicant in a case where the value of the landscaping to be either provided or paid for by the applicant is less than the department's appraised value of the trees or other vegetation to be trimmed or removed if, in addition, the applicant pays to the department an amount equal to the amount of the difference between the value of the landscaping to be either provided or paid for by the applicant and the department's appraised value of the trees or other vegetation to be trimmed or removed.

(2) Any measurement of vegetation to be removed for valuation purposes shall be made at diameter breast height as shown in the section entitled "Height of Measurement" in the *Guide for Plant Appraisal (9th Edition)* as published by the International Society of Arboriculture. Based on the substantial benefit to the state where dead or diseased trees are removed from the right of way, and the negligible value of dead or diseased trees, such vegetation shall not be measured or valued in determining the appraised value. Trees shall be only deemed dead or diseased if listed as such in the report of a certified forester or arborist, subject to review and approval by the department. Upon receipt of a properly completed application, the department shall, within 60 days, issue the permit for vegetation maintenance.

(3)(A) For purposes of this paragraph, the term "historic tree" means a tree or group of trees that are reasonably determined by the department to be:

(i) Identified by a unit of government to recognize an individual or group;

(ii) Located at the site of a historic event and significantly impact an individual's perception of the event;

(iii) Dated to the time of a historic event at the location of the tree, as identified by a unit of government; or

(iv) Confirmed as the progeny of a tree that meets any of the criteria contained in this division.

(B) For purposes of this paragraph, the term "landmark tree" means a tree or group of trees that:

(i) Have been planted and maintained for educational purposes for more than 75 years;

(ii) Were planted as a memorial to an individual, group, event, or cause and are more than 75 years old; or

(iii) Symbolize a historically significant individual, place, event, or contribution, as recognized by a unit of government prior to July 1, 2010.

(C) For purposes of this paragraph, the term "specimen tree" means a hardwood tree or group of hardwood trees that is determined to be in excess of 75 years of age as determined by a registered forester or arborist.

(D) The applicant shall be allowed to remove all trees and vegetation from the target view zone so long as the sign was permitted or assigned a working number by the department on or before December 31, 2010. Vegetation removal shall be prohibited in all areas of the viewing zone outside of the target view zone except that portions of vegetation, such as tree limbs, which extend into the target view zone from outside the target view zone may be trimmed as necessary to preserve the clear target view zone. The only vegetation which cannot be removed from the target view zone pursuant to this paragraph shall be landmark trees, historic trees, and specimen trees, as defined in subparagraphs (A) through (C) of this paragraph, and any tree planted as part of a permitted local, state, or federal government beautification project. After July 1, 2011, however, no beautification project in this state shall include the planting of trees in the right of way within 500 feet of an outdoor advertising sign such that the visibility of a permitted outdoor advertising sign is obscured or could later be obscured by the growth of such vegetation.

(E) Pruning or trimming of trees under a permit shall conform to industry standards as defined by the National Arborist Association, International Society of Arboriculture or ANSI A300 pruning standards as of January 1, 2011, or such later edition as may be adopted by rule or regulation of the department.

(4) An applicant's record of conduct regarding disturbance of trees or other vegetation on state rights of way shall be considered by the

department as part of the evaluation process for any permit or permit renewal application.

(5) Prior to approving any permit application to remove allegedly diseased trees, the department shall verify that such trees are in fact diseased. Such determination shall be made by the department's landscape architect.

(6) A performance bond in an amount adequate for the requirements of the permit as determined by the department shall be required of each permittee.

(f)(1) No trees or other vegetation on state rights of way shall be trimmed, killed, or removed by any person other than in accordance with a permit issued under this Code section by any person other than the department or an authorized agent or contractor thereof.

(2) No outdoor advertising sign to which a permit under this Code section is applicable shall be unused for advertising for a period of six consecutive months or more.

(3) On and after July 1, 1999, no outdoor advertising sign to which a permit under this Code section is applicable shall be maintained in such a condition of disrepair as to be unusable for advertising.

(4)(A) In cases where the department has reasonable cause to believe that a violation of this subsection has been committed by any person, the procedures provided under Code Section 32-6-95 shall apply the same as in cases wherein the department believes that a sign is being maintained in violation of this part.

(B) Following notice, hearing, and a finding that a person has committed a violation of paragraph (1) of this subsection, a civil fine of not less than \$10,000.00 nor more than \$20,000.00, and restitution in an amount equal to the appraised value of the trees or vegetation, or both, which were unlawfully trimmed or removed, shall be imposed on such person.

(C) Following notice, hearing, and a finding that a permittee under this Code section has committed a violation of paragraph (2) of this subsection, an order directing the removal of such unused sign, at the expense of the permittee, shall be issued.

(D) Following notice, hearing, and a finding that a permittee under this Code section has committed a violation of paragraph (3) of this subsection, an order directing the removal of such unusable sign shall be issued.

(E) The department or its authorized agents shall be authorized to enter upon private lands and disassemble and remove signs without civil or criminal liability therefor pursuant to an order

issued in accordance with this paragraph and as provided by Code Section 32-6-96 for disassembly and removal of illegal outdoor advertising signs.

(g) In order to obtain a vegetation maintenance permit for signs which exceed 75 feet in height, as measured from the base of the sign or crown of the adjacent roadway to which the sign is permitted, whichever is higher, the owner of the sign shall agree to reduce the sign to 75 feet in height or less, as measured from the base of the sign or crown of the adjacent roadway to which the sign is permitted, whichever is higher, unless lowering is precluded by local government code or regulation. Work to lower the sign shall be concluded within 60 days of completion of the vegetation removal. If the terms of the work plan are not complied with and all work satisfactorily completed within the allowed time, the performance bond shall be forfeited, and the department shall be authorized to collect the bond and lower the sign. Upon completion of any project which reduces sign height by use of a new support mechanism, such as a new pole, the sign owner shall provide the department with a written footer inspection from the applicable local government or a professional engineer prior to the release of the bond.

(h) The department shall have the right to refuse to issue any vegetation permits to any person, firm, or entity which the department determines is maintaining or is allowing to be maintained any abandoned sign or signs, until all such abandoned signs are removed or brought into compliance with the provisions of this Code section. For purposes of this subsection, the term "abandoned sign" means any sign adjacent to a state-controlled route that has not contained a message for six consecutive months and which has not had a message displayed within 30 days after receipt of notice by certified mail from the department. The addition of a "for rent" panel or a phone number shall not qualify as a message for purposes of this subsection, but self-promotional copy covering at least one entire sign face or advertising copy benefiting charitable, nonprofit, religious, or other noncommercial groups shall qualify as a message.

(i) The department shall have the right to refuse to issue any vegetation permits to any person, firm, or entity which the department determines is maintaining or is allowing to be maintained in their inventory of signs in this state any sign which depicts any material which is obscene as such term is defined in Code Section 16-12-80, or material that is in conflict with the applicable local government's obscenity ordinance. Upon conviction of depiction of any material as obscene the person, firm, or entity shall be punishable by a fine of not less than \$5,000.00 for the first conviction and \$10,000.00 for any subsequent conviction and shall also be guilty of a misdemeanor of a high and aggravated nature.

(j) The removal of signs with lapsed outdoor advertising permits is of benefit to this state but is often too costly for the department to undertake. In order to encourage the removal of such signs and permitted signs that do not conform to the state's current requirements for outdoor advertising signs without the expenditure of state funds, a credit which may be used as an offset toward the total appraised value of the vegetation to be removed in accordance with a vegetation maintenance permit shall be awarded for each qualifying sign removal as follows:

(1) On or before March 1, 2012, the department shall prepare a list of signs which once held a valid outdoor advertising permit but for which the permit has been allowed to lapse. Notification of a sign's inclusion on such list shall be sent to the last known address for the sign's owner as listed on department records and to any other person or entity which the department reasonably finds to have an interest in such sign. Within 30 days of receipt of such notice or 60 days of publication of the list, whichever comes later, any person or entity claiming to be the owner of a sign that they do not believe has been properly included on the list shall be allowed to submit written notice to the department of their objection. Such objection may include a statement of the relevant facts and any supporting documents. On or before July 1, 2012, the department shall publish the final list. Signs which are the subject of any current objections, administrative appeals, or legal disputes shall not be included on such list. This list shall be updated annually and provided to the chairpersons of the House and Senate Transportation Committees on or before the first day of March;

(2) The department shall, on or before January 1, 2012, prepare a schedule or formula to determine the credit to be received for the removal of lapsed-permit signs and permitted nonconforming outdoor advertising signs. Such schedule shall provide a valuation of the credit based on four factors: material used in sign structure, height of sign, size of sign, and terrain and topography. The department shall also prepare a form to be submitted by any person or entity seeking a credit under this subsection. Such form shall require a description of the material used in the sign structure, the height of the sign, the size of the sign, and the terrain and topography where the sign is situated and a calculation of the anticipated credit in accordance with the department's schedule or formula;

(3) At such time as any lapsed-permit sign from the department's updated list or a nonconforming outdoor advertising sign is removed, the person or entity responsible for such removal shall submit to the department the completed removal form and photographic evidence of the removal. For purposes of this subsection, the term "removal"

means removal of all structural elements above ground level; removal of footers or foundation elements shall not be required. Within 60 days of such submission, the department shall certify and return the form. No credit shall be allowed for the removal of a lapsed-permit sign by the owner of such sign. The certified form shall serve as a credit voucher. Credit vouchers may be transferred to another party via notarized statement signed by both parties;

(4) Where a lapsed-permit sign from the department's updated list or a nonconforming sign is to be removed in conjunction with a specific application for a vegetation maintenance permit, the sign to be removed shall be designated by department permit number. If the vegetation permit is approved, then the sign designated for removal shall be removed at least 15 days prior to initiation of work pursuant to the vegetation permit. Removal shall be deemed complete when the removal form and photographic evidence of the removal are submitted to the department. The sign designated for removal need not be owned by the vegetation permit applicant. As such, nothing herein shall be interpreted to require that the removed sign be owned or controlled by the vegetation permit applicant. All work hereunder shall be performed by licensed and bonded entities or individuals, where required by law, and the department shall not be liable for the actions of any nondepartment personnel; and

(5) A credit voucher may be used by an applicant for a vegetation maintenance permit as an offset against the total appraised value of the vegetation to be removed on a dollar-for-dollar basis, except that the total payment shall not be reduced below \$4,000.00. Any unused portion of a credit voucher may be used in conjunction with a subsequent vegetation maintenance application.

(k) Nothing contained in this Code section shall render any sign existing on July 1, 2011, nonconforming. Nothing in this Code section shall supersede any applicable local rules or ordinances. The department shall not deny an applicant a vegetation maintenance permit for complying with applicable local rules or ordinances. (Code 1933, § 95A-934.3, enacted by Ga. L. 1981, p. 955, § 2; Ga. L. 1998, p. 1313, § 3; Ga. L. 2011, p. 601, § 2/HB 179; Ga. L. 2012, p. 775, § 32/HB 942.)

The 2011 amendment, effective July 1, 2011, added subparagraph (a)(1)(B); redesignated former subparagraphs (a)(1)(B) and (a)(1)(C) as present subparagraphs (a)(1)(C) and (a)(1)(D), respectively; substituted "signs permitted or assigned a working number by the department after December 31, 2010, or such owner's agent, shall" for "signs erected after January 1, 1999, or such

owner's agent, will" in paragraph (b)(2); inserted a comma in the first sentence of subsection (d); substituted the present provisions of paragraph (e)(2) for the former provisions, which read: "(2)(A)(i) No trees or vegetation shall be trimmed or removed under this Code section other than within a viewing zone.

"(ii) No removal of any hardwood tree having a diameter outside bark of more

than 8 inches at a height of 6 inches above ground level or any historic or endangered species tree or any tree planted as part of any local, state, or federal government project shall be permitted under this Code section.

“(iii) All hardwood trees having a diameter outside bark of 8 inches or less at a height of 6 inches above ground level may be removed from within a viewing zone.

“(iv) All nonhardwood trees may be removed from within a viewing zone for a combined total of 250 feet horizontal distance parallel to the right of way.

“(v) All nonhardwood trees having a diameter outside bark of less than 12 inches at a height of 6 inches above ground level may be removed from within a viewing zone.

“(vi) Pine trees having a diameter outside bark of 12 inches or more at a height of 6 inches above ground level shall not be removed from a viewing zone in such numbers as to reduce stocking to less than the minimum standard for full stocking for such trees, as determined by the Georgia Forestry Commission, over an area having a combined total of not less than 250 feet horizontal distance parallel to the right of way.

“(vii) The provisions of divisions (iv) and (vi) of this subparagraph notwithstanding, in the case of any outdoor advertising sign erected on or before April 20, 1998, and which is less than 35 feet in height as measured from the top of the sign to the ground directly beneath or to the road level, whichever distance results in the best view or the greatest elevation, or which is subsequently lowered to such a height, the horizontal distance of the area within the viewing zone from which all trees, other than hardwoods having a diameter outside the bark of more than 8 inches at a height of 6 inches above

ground level, may be removed shall be increased to 350 feet.”; added paragraph (e)(3); redesignated former subparagraph (e)(2)(B) as present subparagraph (e)(3)(D); substituted “2011” for “1999” in the middle of subparagraph (e)(3)(D); redesignated former paragraphs (e)(3) through (e)(5) as present paragraphs (e)(4) through (e)(6), respectively; and added subsections (g) through (k).

The 2012 amendment, effective May 1, 2012, part of an Act to revise, modernize, and correct the Code, redesignated the former introductory language of paragraph (e)(3) as present subparagraph (e)(3)(D) and redesignated former subparagraph (e)(3)(D) as present subparagraph (e)(3)(E); revised punctuation and language in the last sentence of subsection (h); and substituted “\$5,000.00” for “\$5000.00” in subsection (i).

Editor’s notes. — Ga. L. 2011, p. 601, § 4/HB 179, not codified by the General Assembly, provides: “The Department of Transportation shall have 120 days from the effective date to promulgate any forms or policies necessary to implement this Act. Those applications submitted before any necessary forms and policies are in place shall be processed in accordance with the regulations in place prior to the effective date. Those holding vegetation maintenance permits or renewals issued at any time prior to the promulgation of the necessary forms and policies shall, upon written request to the department, be able to trim or remove vegetation in accordance with the terms of this Act.” This Act became effective July 1, 2011.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 91 (2011). For article, “Highways, Bridges, and Ferries: Regulation of Maintenance and Use of Public Roads Generally,” see 28 Ga. St. U.L. Rev. 91 (2011).

JUDICIAL DECISIONS

No donation of constitutionality forbidden gratuity. — Legislative scheme allowing the owners of private outdoor advertising to trim vegetation on public property blocking the view of the owners’ advertising was not an unconsti-

tutional donation, prohibited by Ga. Const. 1983, Art. III, Sec. VI, Para. VI, because the legislature declared that outdoor advertising benefits the state, and the private individuals were required to pay the state for the privilege of allowing

the public to have an unimpeded view of the owners' signs. *Garden Club of Ga. v. Shackelford*, 274 Ga. 653, 560 S.E.2d 522 (2002).

OPINIONS OF THE ATTORNEY GENERAL

Direct economic benefit from material severed from rights-of-way. — Neither O.C.G.A. § 32-6-75.2 nor O.C.G.A. § 32-6-75.3 authorizes any private person to derive any economic benefit directly from disposition of material severed from rights-of-way. 1981 Op. Att'y Gen. No. 81-75.

No donation of constitutionally for-

bidden gratuity. — Cutting of trees and vegetation on rights-of-way, without cost or expense to taxpayers and to extent no more than minimally necessary to facilitate reasonably adequate public viewing of privately owned billboards, does not itself amount to donation of constitutionally forbidden gratuity. 1981 Op. Att'y Gen. No. 81-75.

RESEARCH REFERENCES

ALR. — Governmental liability for compensation or damages to advertiser arising from obstruction of public view of sign or billboard on account of growth of vegetation in public way, 21 ALR4th 1309.

32-6-76. Restrictions on directional signs generally.

Paragraphs (1) through (7), (9), (10), (13) through (17), (19), and (20) of subsection (a) of Code Section 32-6-75 are applicable to directional signs authorized by paragraph (1) of Code Section 32-6-72 and paragraph (1) of Code Section 32-6-73; and, in addition thereto, no directional sign shall be erected or maintained which:

- (1) Is located in a rest area, parkland, or scenic area;
- (2) Contains an area, to be measured by the smallest square, rectangle, triangle, circle, or combination thereof, which encompasses the entire sign, in excess of 150 square feet or exceeding 20 feet in height or 20 feet in length, inclusive of any border and trim but excluding the base, apron, supports, and other structural members;
- (3) Contains, includes, or is illuminated by any flashing, intermittent, or moving light or lights;
- (4) Is located adjacent to an interstate highway and which is within 2,000 feet of an interchange or intersection at grade. The foregoing 2,000 foot zone shall be measured along the interstate highway from the point at which the pavement commences or ceases to widen at exits from or entrances to the main traveled way;
- (5) Is located within 2,000 feet of a rest area, parkland, or scenic area;
- (6) Is located within one mile of another directional sign facing the same direction of travel;

(7) Creates the existence of more than three directional signs pertaining to the same activity facing the same direction of travel along a single route approaching the activity;

(8) Is located along the interstate system at a point more than 75 air miles from the advertised activity;

(9) Is located along the primary system at a point more than 50 air miles from the advertised activity;

(10) Contains information other than the identification of the attraction or activity and directional information useful to the traveler in locating the attraction, such as mileage, route numbers, or exit numbers. The sign shall not contain descriptive words, phrases, or pictorial or photographic representations of the activity or its environs; or

(11) Advertises privately owned activities or attractions other than natural phenomena, scenic attractions, historic, educational, cultural, scientific, and religious sites, agricultural tourist attractions designated by the Department of Agriculture, and outdoor recreational areas and which are nationally or regionally known and are of outstanding interest to the traveling public, as determined by the State Transportation Board. (Ga. L. 1971, Ex. Sess., p. 5, § 5; Code 1933, § 95A-917, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1974, p. 1422, §§ 28A, 29; Ga. L. 1977, p. 263, § 3; Ga. L. 1985, p. 149, § 32; Ga. L. 1996, p. 1052, § 4; Ga. L. 2008, p. 314, § 2/HB 1088.)

Cross references. — Directional road signs to direct passing traffic to agricultural tourist attractions, § 50-7-70.

OPINIONS OF THE ATTORNEY GENERAL

General statutes controls over local ordinances. — When issuing permits for outdoor advertising devices, the Department of Transportation must be guided by

the law of the State of Georgia, notwithstanding the local zoning ordinances. 1975 Op. Att'y Gen. No. 75-24.

RESEARCH REFERENCES

ALR. — Building regulations as applicable to billboards and similar structures, 60 ALR 1158.

32-6-77. Exceptions to spacing limitations contained in Code Sections 32-6-75 and 32-6-76.

Signs which are authorized by and erected or maintained pursuant to paragraph (2) or (3) of Code Section 32-6-72 or paragraph (2) or (3) of Code Section 32-6-73 or which are official signs or notices, as defined in

paragraph (13) of Code Section 32-6-71, and signs which are not lawfully erected or maintained shall not be counted nor shall measurements be made therefrom for the purpose of determining the spacing limitations prescribed in Code Sections 32-6-75 and 32-6-76. (Ga. L. 1971, Ex. Sess., p. 5, § 6; Code 1933, § 95A-918, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1977, p. 263, § 4.)

RESEARCH REFERENCES

ALR. — Building regulations as applicable to billboards and similar structures, 60 ALR 1158.

32-6-78. Restrictions on public service signs.

No public service sign authorized by paragraph (1) of Code Section 32-6-72 or paragraph (1) of Code Section 32-6-73 shall be erected or maintained which:

(1) Is attached to a school bus shelter, the construction of which is not authorized by state law or local ordinance;

(2) Is attached to a school bus shelter located at a place not approved by the governmental agency having jurisdiction of the highway along which said shelter is located;

(3) Contains an area, to be measured by the smallest square, rectangle, triangle, circle, or combination thereof, which encompasses the entire sign, in excess of 32 square feet; or

(4) Creates a situation in which there is more than one sign facing in any one direction on each shelter. (Ga. L. 1971, Ex. Sess., p. 5, § 7; Code 1933, § 95A-919, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1977, p. 263, § 5.)

RESEARCH REFERENCES

ALR. — Building regulations as applicable to billboards and similar structures, 60 ALR 1158.

Validity and construction of state or local regulation prohibiting off-premises advertising structures, 81 ALR3d 486.

32-6-79. Permits for nonconforming signs; right of department to refuse to issue additional permits to persons maintaining illegal sign; appeal from department's decision.

(a) On and after October 6, 1971, no person, firm, or corporation shall erect or maintain a sign authorized by paragraph (1), (4), or (5) of Code Section 32-6-72 without a permit issued by the department.

(b) On and after January 1, 1972, no person, firm, or corporation shall maintain a sign lawfully in existence on October 6, 1971, and

which is authorized by this part without a permit issued by the department.

(c) On and after March 4, 1977, no person, firm, or corporation shall erect or maintain a sign authorized by paragraph (1) of Code Section 32-6-73 without a permit issued by the department.

(d) On and after July 1, 1977, no person, firm, or corporation shall maintain a sign lawfully in existence on March 4, 1977, and which sign is authorized by paragraph (1) of Code Section 32-6-73 without a permit issued by the department.

(e)(1) It is the intent of this Code section to provide for a system of cataloguing and registering nonconforming signs in order to administer this part more adequately. The department is authorized to promulgate rules and regulations consistent with this Code section requiring the registration of nonconforming signs; and such rules and regulations shall inform the applicants of the procedures to make application for nonconforming sign permits.

(2) From March 24, 1980, all persons, firms, or corporations who own nonconforming signs as defined in paragraph (12) of Code Section 32-6-71 shall have a period of one year during which time they shall be required to file application for nonconforming sign permits. Applications for nonconforming sign permits shall be made upon forms prescribed and provided by the department and shall contain the signature of the applicant and such other information as may be required by the department's rules and regulations. If the applicant files the application for a nonconforming sign permit upon the forms and according to the procedures provided by the department and within the specified time period of one year, the application shall be considered to have been filed timely and properly. An application fee of \$50.00 shall accompany the application for each nonconforming sign and both the application and the fee shall be submitted to the department. The money received from permit fees shall be used to help defray the expenses of administering this part, Code Section 48-2-17 to the contrary notwithstanding. The department shall have a period of two years from March 24, 1980, to process applications for nonconforming sign permits. If at the end of this two-year period the department has failed to approve or deny a proper and completed application, it shall be conclusively presumed for all purposes that the sign can be permitted as a nonconforming sign and the department must issue the permit within a reasonable time. Should the department deny the application for a nonconforming sign permit, the applicant may seek relief in accordance with Code Sections 50-13-13 through 50-13-18. In cases where the applicant fails to exhaust the procedures prescribed by Code Sections 50-13-13 through 50-13-18, the department's denial of the permit

request will be final and the sign shall then become an illegal sign as defined by paragraph (6) of Code Section 32-6-71 and shall be subject to removal under the terms of this part.

(3) If the owner of the nonconforming sign fails to apply properly for a permit, it is conclusively presumed that the sign has been abandoned, and the sign shall then become an illegal sign as defined by paragraph (6) of Code Section 32-6-71, and the sign shall be subject to removal under the terms of this part.

(f) On or after March 24, 1980, the department shall have the right to refuse to issue any additional permits to any person, firm, or corporation who the department determines is maintaining or is allowing to be maintained an illegal sign or signs as defined by paragraph (6) of Code Section 32-6-71 on the interstate or primary highways in this state until such illegal sign or signs are removed. The refusal by the department to issue any additional permits shall not be considered a final denial. If the applicant does not believe the sign or signs designated by the department are illegal, the applicant may seek relief in accordance with Code Sections 50-13-13 through 50-13-18. Unless, within 120 days after the applicant has requested an administrative hearing, the department has issued a final agency decision that the sign or signs are illegal, the department may no longer refuse to issue permits because of a contention that an illegal sign or signs are being maintained. (Ga. L. 1971, Ex. Sess., p. 5, § 9; Code 1933, § 95A-921, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1977, p. 263, § 7; Ga. L. 1980, p. 1017, § 5; Ga. L. 1985, p. 149, § 32.)

Code Commission notes. — Pursuant to Code Section 28-9-5, "cataloguing" was substituted for "cataloging" in the first sentence of paragraph (e)(1).

JUDICIAL DECISIONS

Cited in *Ledford v. Department of Transp.*, 253 Ga. 717, 324 S.E.2d 470 (1985).

OPINIONS OF THE ATTORNEY GENERAL

Zoned commercial or industrial areas. — Department of Transportation may issue permits for outdoor advertising devices, and renew such permits, within "forest-agricultural" districts of Glynn

County if the department commonly and generally recognizes the activities permitted therein as commercial or industrial. 1975 Op. Att'y Gen. No. 75-24.

32-6-80. Renewal of permits for nonconforming signs; transfer of permits for nonconforming signs.

(a) After March 24, 1980, renewal of permits for nonconforming signs as defined in paragraph (12) of Code Section 32-6-71 and as authorized

in subsection (e) of Code Section 32-6-79 shall be made to the department upon forms prescribed by the department; shall contain the signature of the applicant and such other information as may be required by the department's rules and regulations; and shall be verified under oath by the person, firm, or corporation making the application. Permit renewals shall be issued and shall be valid only if the sign is maintained in accordance with this part during the 12 month period next following the date of issuance. The fee for the renewal of a permit shall be \$25.00. The money received from permit fees shall be used to help defray the expenses of administering this part. Upon receipt of a properly executed application and the appropriate fee for the maintenance of a sign which may be lawfully maintained pursuant to this part, the department shall, within 60 days, issue a permit renewal authorizing the maintenance of the sign for which application is made. Application for the renewal of a permit shall be made to the department not more than 90 days nor less than 60 days before the expiration date of the permit for which renewal is sought. If the department fails to receive the renewal application before the expiration date of the permit, the department will notify the applicant that the renewal application is overdue when the applicant's address is known or reasonably available to the department and shall give the applicant 30 days after the expiration date to send the department the renewal application. If the applicant does not send the properly executed application and the appropriate fee within the specified 30 day period, the sign shall then become an illegal sign. No permit shall be renewed if the application for the renewal thereof has not been made in accordance with this Code section.

(b) Permits shall be transferable. An application to have the permit transferred shall be made within 30 days of the change in ownership of the sign; shall be made to the department upon forms prescribed by the department; shall contain the signature of the applicant and such other information as may be required by the department; and shall be verified under oath by the person, firm, or corporation making application for transfer. Failure to comply in a timely and proper manner with this subsection shall be grounds for revocation of the permit. (Code 1933, § 95A-922, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1980, p. 1017, § 6; Ga. L. 1982, p. 3, § 32.)

OPINIONS OF THE ATTORNEY GENERAL

Zoned commercial or industrial areas. — Department of Transportation may issue permits for outdoor advertising devices, and renew such permits, within "forest-agricultural" districts of Glynn County if the department commonly and generally recognizes the activities permit-

ted therein as commercial or industrial. 1975 Op. Att'y Gen. No. 75-24.

If there are activities permitted in the district which are commonly and generally recognized as commercial, then the permits for outdoor advertising devices may be renewed, provided criteria for re-

newal established elsewhere in the law are met. 1975 Op. Att'y Gen. No. 75-24.

32-6-81. Revocation or withholding of permits for illegal or unauthorized actions against the department's property.

(a) It shall be cause for the department to revoke a sign permit or refuse to issue a sign permit if any of the department's property on the rights of way, including but not limited to trees, vegetation, or fences, is destroyed, damaged, converted, or altered by or on behalf of a person, firm, or corporation who owns, erects, maintains, leases, or uses any sign which is controlled by this part. When the department believes that any of the aforesaid property has been destroyed, damaged, converted, or altered, the department shall make a preliminary investigation and based on its findings may:

(1) Revoke the permit or permits of any owner of a sign or signs if the department determines that the person, firm, or corporation who owns the land or who owns, erects, maintains, leases, or uses the sign or signs caused, hired, procured, or consciously or by design consented to any of the illegal acts described in this paragraph at or near the sign site, thereby depriving the sign owner of the permit to use that site; or

(2) Refuse to issue a permit or permits for a sign site or sites for a period not to exceed five years if the department determines that the applicant has caused, hired, procured, or consciously or by design consented to any of the illegal acts described in this subsection on the department's rights of way within 500 feet on either side of that sign site or sites.

(b) Before the actions listed in paragraph (1) of subsection (a) of this Code section may be taken, the department shall give 30 days' written notice via certified mail or statutory overnight delivery to the permit holder; and this notice shall apprise the permit holder of a hearing that will be held in accordance with Code Sections 50-13-13 through 50-13-18. If the action described in paragraph (2) of subsection (a) of this Code section is taken, the department shall state this in its refusal to issue a permit, and the applicant shall have the right to an administrative review of this action as provided by Code Sections 50-13-13 through 50-13-18. (Code 1933, § 95A-930.2, enacted by Ga. L. 1980, p. 1017, § 8; Ga. L. 1982, p. 3, § 32; Ga. L. 2000, p. 1589, § 3.)

Editor's notes. — Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provided that the 2000 amendment was applicable to notices delivered on or after July 1, 2000.

32-6-82. Acquisition by department of property rights in outdoor advertising which does not comply with requirements of part.

The department is authorized to acquire by purchase, gift, or condemnation and to pay just compensation for any property rights in outdoor advertising signs, displays, and devices which were lawfully erected in compliance with the applicable laws in effect at the time of erection but which do not conform to this part or which fail to comply with this part due to changed conditions beyond the control of the sign owner. The department shall be limited to an expenditure of \$5 million for the state's portion of just compensation. The department shall be prohibited from paying more than 25 percent of any award for just compensation. (Ga. L. 1971, Ex. Sess., p. 5, § 11; Code 1933, § 95A-923, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1974, p. 1422, § 33.)

RESEARCH REFERENCES

ALR. — Eminent domain: determination of billboards or other advertising signs, 73 ALR3d 1122.

32-6-83. Acquisition by municipal corporation or county of outdoor advertising which does not comply with requirements of applicable ordinances, regulations, or resolutions.

Any municipal corporation or county is authorized to acquire by purchase, gift, or condemnation and to pay just compensation for any property rights in outdoor advertising signs, displays, and devices which were lawfully erected but which do not conform with the provisions of any lawful ordinance, regulation, or resolution or which at a later date fail to comply with the provisions of any lawful ordinance, regulation, or resolution due to changed conditions beyond the control of the sign owner. No municipal corporation or county shall remove or cause to be removed any such nonconforming outdoor advertising sign, display, or device without paying just compensation. Such compensation shall be paid in accordance with the conditions stated in Code Section 32-6-84. For the purposes of this Code section, the term "devices" means light, lighting fixtures, or other fixtures which are permanently attached to an advertising sign or display. (Ga. L. 1967, p. 423, § 8; Code 1933, § 95A-923.1, enacted by Ga. L. 1979, p. 803, § 1.)

Law reviews. — For article surveying Georgia local government law for 1978-79, legislative and judicial developments in see 31 Mercer L. Rev. 155 (1979).

JUDICIAL DECISIONS

County ordinance violated O.C.G.A. § 32-6-83 since the ordinance provided that a nonconforming sign damaged by weather or an act of God could not be repaired or reerected. *State v. Hartrampf*, 273 Ga. 522, 544 S.E.2d 130 (2001).

Just compensation. — County sign ordinance was unconstitutional since the ordinance conflicted with O.C.G.A. § 32-6-83 requiring the payment of just compensation after the county acquired

an owner's property rights when an advertiser attempted to repair a nonconforming outdoor advertising sign damaged by a tornado and the ordinance contained no provision for paying compensation. Thus, the trial court's grant of summary judgment for the county was erroneous when the county failed to pay the advertiser just compensation for taking of the advertiser's sign. *Outdoor Sys. v. Cobb County*, 274 Ga. 611, 555 S.E.2d 435 (2001).

RESEARCH REFERENCES

ALR. — Municipal power as to billboards and outdoor advertising, 58 ALR2d 1314.

Municipality's power to permit private

owner to construct building or structure overhanging or crossing the air space above public street or sidewalk, 76 ALR2d 896.

32-6-84. Interests and losses which may be compensable under Code Sections 32-6-82 and 32-6-83.

The compensation provided for in Code Sections 32-6-82 and 32-6-83 is authorized to be paid only for the following:

(1) The taking from the owner of such sign, display, or device of all right, title, leasehold, and interest in such sign, display, or device;

(2) The taking from the owner of the real property on which the sign, display, or device is located of the right to erect and maintain such signs, displays, and devices thereon;

(3) The actual financial loss suffered by the lessee under a written lease expressly and solely permitting the erection and maintenance of a sign, display, or device (which was lawful on the date such lease was executed) because of the refusal by the department to issue a permit for the erection of such sign, display, or device, provided that the amount of compensation paid may not exceed the pro rata part of the entire rental paid and to be paid under such lease for the unelapsed portion thereof remaining on July 1, 1973; or

(4) The actual financial loss suffered by the lessor under a written lease expressly and solely permitting the erection and maintenance of a sign, display, or device (which was lawful on the date such lease was executed) because of the refusal by the department to issue a permit for the erection of such sign, display, or device, provided that the amount of compensation paid may not exceed the pro rata part of the entire rental paid and to be paid under such lease for the unelapsed portion thereof remaining on July 1, 1973. (Ga. L. 1967, p.

423, § 8; Ga. L. 1971, Ex. Sess., p. 5, § 12; Code 1933, § 95A-924, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 2001, p. 4, § 32.)

RESEARCH REFERENCES

ALR. — Eminent domain: determination of just compensation for condemnation of billboards or other advertising signs, 73 ALR3d 1122.

32-6-85. Department's exercise of eminent domain power to acquire interests specified in Code Section 32-6-84.

Whenever it is necessary, in the judgment of the commissioner, to acquire those interests specified in Code Section 32-6-84, the department may exercise the power of eminent domain in the manner provided in Article 1 of Chapter 3 of this title for the acquisition of real property needed for the construction of highways. (Ga. L. 1967, p. 423, § 9; Ga. L. 1971, Ex. Sess., p. 5, § 13; Code 1933, § 95A-925, enacted by Ga. L. 1973, p. 947, § 1.)

32-6-86. Compensation contingent upon federal matching funds.

The department shall not acquire any sign by purchase or condemnation, any portion of the cost of which is eligible for federal participation, until such time as federal matching funds have been apportioned to and made available to the department for such acquisition. No sign shall be acquired by condemnation, except after three months' written notice has been given to the owner thereof of the intention to so acquire the same, during which time the penalties provided by this part shall not apply. (Ga. L. 1971, Ex. Sess., p. 5, § 14; Code 1933, § 95A-926, enacted by Ga. L. 1973, p. 947, § 1.)

U.S. Code. — For provisions regarding referred to in this Code section, see 23 authorization of federal matching funds, U.S.C. § 131(m).

32-6-87. Agreements with United States Secretary of Transportation.

Subject to the provisions of this part, the department is authorized, on behalf of the state, to enter into agreements with the United States Secretary of Transportation (as provided in Section 131 of Title 23 of the United States Code) relating to the control of outdoor advertising in areas adjacent to the interstate and primary systems, including the establishment of information centers at safety rest areas. The department is also authorized to take action in the name of the state to comply with the terms of such agreements. (Ga. L. 1971, Ex. Sess., p. 5, § 22; Code 1933, § 95A-934, enacted by Ga. L. 1973, p. 947, § 1.)

32-6-87.1. “RV friendly” markers.

(a) Subject to the prior approval of the Federal Highway Administration, the department is directed to incorporate the use of “RV friendly” markers on specific service signs for business establishments that cater to the needs of persons driving recreational vehicles. A business establishment that qualifies for participation in the specific service sign program and that also qualifies as “RV friendly” may request that an “RV friendly” marker be displayed immediately adjacent to such establishment’s business logo sign on the appropriate background sign panel. For purposes of this Code section, the “RV friendly” marker to be displayed shall be such marker as may be approved by the Federal Highway Administration in the Manual on Uniform Traffic Control Devices.

(b) In accordance with Chapter 13 of Title 50, the “Georgia Administrative Procedure Act,” and subject to the approval of the Federal Highway Administration, the department shall promulgate such rules and regulations as are necessary to implement the provisions of this Code section, including the promulgation of rules and regulations setting forth the minimum requirements that business establishments must meet in order to qualify as “RV friendly.” Such requirements shall include, but shall not be limited to, the availability at each qualifying business establishment of parking spaces, entrances and exits in sufficient number and of sufficient size and dimensions to easily accommodate recreational vehicles, and the presence of appropriate overhang clearances at all facilities, if applicable.

(c) For the purposes of assisting the Federal Highway Administration in considering the approval of an “RV friendly” marker for incorporation into the Manual on Uniform Traffic Control Devices, the department is directed to submit a request to the Federal Highway Administration for permission to experiment with the use of an “RV friendly” marker on specific service signs in accordance with this Code section. (Code 1981, § 32-6-87.1, enacted by Ga. L. 2007, p. 45, § 1/SB 87; Ga. L. 2008, p. 324, § 32/SB 455.)

32-6-88. Designation of defined areas.

Upon written request made by any county, city, corporation, partnership, association, person, or persons, the board is authorized to consider and to designate a specific area or areas as a defined area or areas, upon a showing having been made that the area in question contains directional signs, displays, or devices which were lawfully erected under state law in force at the time of erection and in existence on May 5, 1976, and which do not conform to the requirements of paragraphs (1) through (6) of Code Section 32-6-72 and paragraphs (1) through (4)

of Code Section 32-6-73, and upon a further showing that such directional signs, displays, and devices provide directional information about goods and services in the specific interest of the traveling public and that their removal would work a substantial economic hardship in such defined area or areas. (Code 1933, § 95A-934.1, enacted by Ga. L. 1979, p. 1086, § 5.)

32-6-89. Retention of directional signs, displays, and devices in defined areas.

Upon designation made by the board of an area or areas as a defined area or areas for purposes of requesting the approval of the United States Secretary of Transportation for the retention of directional signs, displays, and devices in the specific interest of the traveling public, the Georgia Department of Transportation is authorized to request the approval of the United States Secretary of Transportation. (Code 1933, § 95A-934.2, enacted by Ga. L. 1979, p. 1086, § 5; Ga. L. 1991, p. 94, § 32.)

32-6-90. Promulgation of rules and regulations by department.

The department is authorized to promulgate rules and regulations governing the issuance and revocation of permits for the erection and maintenance of outdoor advertising which is authorized by Code Sections 32-6-72 and 32-6-73 and which is not prohibited by this part. The department is further authorized to promulgate rules and regulations governing the issuance, revocation, and renewal of permits for the trimming of trees and vegetation on the state's rights of way authorized by and in accordance with Code Section 32-6-75.3. Such rules and regulations shall be consistent with the safety and welfare of the traveling public, and as may be necessary to carry out the policy of the state declared in this part, and consistent with the purposes of the Highway Beautification Act of 1965, Public Law 89-285, as amended, and contained in Title 23, United States Code. The department is further authorized to promulgate such rules and regulations as are necessary to carry out this part. (Ga. L. 1967, p. 423, § 5; Ga. L. 1971, Ex. Sess., p. 5, § 8; Code 1933, § 95A-920, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1974, p. 1422, § 31; Ga. L. 1977, p. 263, § 6; Ga. L. 1981, p. 955, § 1; Ga. L. 1998, p. 1313, § 4.)

Law reviews. — For review of 1998 and ferries, see 15 Ga. St. U.L. Rev. 136 legislation relating to highways, bridges, (1998).

JUDICIAL DECISIONS

Outdoor advertising. — Since former paragraph (a)(4) of O.C.G.A. § 32-2-41 expressly forbade the commissioner from exercising the board's power concerning

the approval of "long-range plans and programs of the department," and the adoption, amendment, or repeal of departmental rules and regulations concerning outdoor advertising in Georgia was a long-range program, the commissioner was not empowered to adopt proposed amendments to such rules and regulations sua sponte. *Outdoor Adv. Ass'n v. DOT*, 186 Ga. App. 550, 367 S.E.2d 827, cert. denied, 186 Ga. App. 918, 367 S.E.2d 827 (1988).

O.C.G.A. § 32-6-70, in no uncertain terms, delegated the regulation of outdoor

advertising to the Georgia Department of Transportation (DOT), as the statute provided in part that it was the intention of the General Assembly to provide a statutory basis for the regulation of outdoor advertising, such basis to be consistent with the public policy relating to areas adjacent to roads of the state highway system, under § 32-6-70(a), and O.C.G.A. § 32-6-90 further authorized the DOT to promulgate regulations governing permits for outdoor advertising. *Walker v. DOT*, 279 Ga. App. 287, 630 S.E.2d 878 (2006).

OPINIONS OF THE ATTORNEY GENERAL

Department must maintain control over contemplated tree cutting operations. — Given the Department of Transportation's authority and obligation to control the state highway system, it seems imperative that the department maintain rigid and absolute control over any contemplated tree cutting operations, particularly if those operations are undertaken by private individuals on rights-of-way. 1981 Op. Att'y Gen. No. 81-75.

Authorization to regulate cutting of trees and vegetation on rights-of-way. — Authorization to formulate rules related to, and issuance of permits for, cutting of trees and vegetation on rights-of-way does not impinge upon the Department of Transportation's authority and legal obligation to control the state highway system. 1981 Op. Att'y Gen. No. 81-75.

RESEARCH REFERENCES

ALR. — Building regulations as applicable to billboards and similar structures, 60 ALR 1158.

Power of highway officer in respect of

billboards or other conditions on adjoining property which are deemed dangerous to travel or offensive esthetically to travelers, 81 ALR 1547.

32-6-91. Erection or maintenance of sign without permit as constituting misdemeanor.

Any person who erects or maintains any sign for which a permit is required by this part without a valid permit or renewal of such permit issued by the department shall be guilty of a misdemeanor. Each day or fraction thereof during which a sign is unlawfully maintained shall constitute a separate offense. The commissioner and officials or employees of said department designated by the commissioner are authorized to take such actions as may be necessary or appropriate to procure the prosecution and conviction of any person, firm, or corporation violating this Code section. (Ga. L. 1971, Ex. Sess., p. 5, § 15; Code 1933, § 95A-927, enacted by Ga. L. 1973, p. 947, § 1.)

32-6-92. Maintenance of unauthorized sign as constituting misdemeanor.

Any person who maintains any sign not authorized by this part and which was not lawfully in existence on October 6, 1971, shall be guilty of a misdemeanor. Each day or fraction thereof during which a sign is unlawfully maintained shall constitute a separate offense. The commissioner and officials or employees of the department designated by the commissioner are authorized to take such actions as may be necessary or appropriate to procure the prosecution and conviction of any person, firm, or corporation violating this Code section. (Ga. L. 1971, Ex. Sess., p. 5, § 16; Code 1933, § 95A-928, enacted by Ga. L. 1973, p. 947, § 1.)

RESEARCH REFERENCES

ALR. — Municipal power as to billboards and outdoor advertising, 58 ALR2d 1314.

32-6-93. Erection or maintenance of sign without a permit as constituting a public nuisance; enjoining erection or maintenance of such sign.

The erection or maintenance by any person, firm, or corporation of any sign for which a permit is required by this part without a valid permit or renewal thereof issued by the department is declared to be a public nuisance. In addition to the remedies provided for in this part or which may otherwise exist under the laws of Georgia, the department is authorized to bring an equitable proceeding to enjoin any person, firm, or corporation from erecting or maintaining, without a valid permit or renewal thereof, any sign for which a permit or renewal thereof is required by this part. It shall not be necessary for the department to allege and prove that there is no adequate remedy at law in order to obtain the equitable relief provided for in this Code section. (Ga. L. 1971, Ex. Sess., p. 5, § 17; Code 1933, § 95A-929, enacted by Ga. L. 1973, p. 947, § 1.)

RESEARCH REFERENCES

ALR. — Municipal power as to billboards and outdoor advertising, 58 ALR2d 1314. Billboards and other outdoor advertising signs as civil nuisance, 38 ALR3d 647.

32-6-94. Maintenance of unauthorized sign as constituting a public nuisance; enjoining maintenance of such sign.

The maintenance by any person, firm, or corporation of any sign which is not authorized by this part and which was not lawfully in

existence on October 6, 1971, is declared to be a public nuisance. In addition to the remedies provided for in this part or which may otherwise exist under the laws of Georgia, the department is authorized to bring an equitable proceeding to enjoin any person, firm, or corporation from maintaining any sign which is not in compliance with this Code section. It shall not be necessary for the department to allege and prove that there is no adequate remedy at law in order to obtain the equitable relief provided for in this Code section. (Ga. L. 1971, Ex. Sess., p. 5, § 18; Code 1933, § 95A-930, enacted by Ga. L. 1973, p. 947, § 1.)

RESEARCH REFERENCES

ALR. — Municipal power as to billboards and outdoor advertising, 58 ALR2d 1314. Billboards and other outdoor advertising signs as civil nuisance, 38 ALR3d 647.

32-6-95. Applicability of Chapter 13 of Title 50, the “Georgia Administrative Procedure Act,” to part generally; affirmation of agency decision by operation of law.

(a) In addition to the procedures and remedies afforded by this part, any person, firm, or corporation who owns, uses, leases, or subleases any outdoor advertising sign which is controlled by this part or who owns property on which a sign is located shall be subject to Chapter 13 of Title 50, the “Georgia Administrative Procedure Act,” with respect to the erection, maintenance, or use of outdoor advertising signs.

(b) It is specifically declared that the procedures provided in Code Sections 50-13-13 through 50-13-22 may be employed in cases wherein the department believes that a sign has been erected or is being maintained or used in violation of this part. After conducting the hearing required by Code Section 50-13-13, the commissioner or the commissioner’s designee, hearing officer, or others are authorized to issue an order requiring the disassembly and removal of any sign which has been administratively determined to be illegal as defined by paragraph (6) of Code Section 32-6-71. In the event that the commissioner or the commissioner’s designee, hearing officer, or others find that a sign is illegal and order its disassembly and removal, the party or parties against whom the order is directed shall be given 120 days from the date of the order in which to disassemble and remove the sign. In the event the party or parties against whom the order is directed fail to comply with the order, the department may disassemble and remove the sign in accordance with Code Section 32-6-96.

(c) Notwithstanding any other law to the contrary, when a petition for judicial review of a final decision of the commissioner or the commissioner’s designee, hearing officer, or others in any matter arising under this title is filed pursuant to Chapter 13 of Title 50, the

“Georgia Administrative Procedure Act,” if the superior court in which the petition for review is filed does not hear the case within 120 days from the date the petition for review is filed with the court, the final agency decision shall be considered affirmed by operation of law unless a hearing originally scheduled to be heard within 120 days has been continued to a date certain by order of the court. In the event a hearing is held later than 120 days after the date the petition for review is filed with the superior court because a hearing originally scheduled to be heard within the 120 days has been continued to a date certain by order of the court, the final agency decision shall be considered affirmed by operation of law if no order of the court disposing of the issues presented for review has been entered within 60 days after the date of the continued hearing. If a case is heard within 120 days from the date the petition for review is filed, the final agency decision shall be considered affirmed by operation of law if no order of the court dispositive of the issues presented for review has been entered within 60 days of the date of the hearing.

(d) A decision of the agency affirmed by operation of law under subsection (c) of this Code section shall be subject to appellate review in the same manner as a decision of the superior court. The date of entry of judgment for purposes of appeal pursuant to Code Section 5-6-35 of a decision affirmed by operation of law without action of the superior court shall be the last date on which the superior court could have taken action under subsection (c) of this Code section. (Code 1933, § 95A-930.1, enacted by Ga. L. 1980, p. 1017, § 7; Ga. L. 1993, p. 969, § 1.)

JUDICIAL DECISIONS

Affirmed by operation of law. — When landowners and a sign company sought judicial review of the Georgia Department of Transportation’s denial of their request for permits to erect outdoor advertising on the owners’ property, an affirmance of the denial was affirmed by operation of law, under O.C.G.A. § 32-6-95(c), because the owners and the company did not schedule a hearing on their petition for judicial review to occur within 120 days of the petition being filed. *Walker v. DOT*, 279 Ga. App. 287, 630 S.E.2d 878 (2006).

Construction with § 34-9-105. — In light of the fact that O.C.G.A. § 32-6-95(c) is worded nearly identically to O.C.G.A. § 34-9-105(b) and that both statutes concern trial court review of agency decisions, there is no reason to interpret the “affirmed by operation of law” provision in § 32-6-95(c) differently from the interpretation of the similar provision in § 34-9-105(b). *Walker v. DOT*, 279 Ga. App. 287, 630 S.E.2d 878 (2006).

32-6-96. Authority of department to enter upon private lands to implement administrative decisions; reimbursement of department for expenses; return or disposition of stored sign remnants.

(a) After notifying the landowner by registered or certified mail or statutory overnight delivery, in cases where an administrative order has been issued by the commissioner or his designee, hearing officer, or others requiring the removal of an illegal outdoor advertising sign and the order has become a final decision, the department shall be authorized to enter upon privately owned lands for the purposes of effectuating the administrative order requiring disassembly and removal of illegal signs, provided the order issued authorizes this action by the department.

(b) The disassembly and removal of any illegal sign by the department shall begin only after an inspection of the sign site has been made by an employee of the department and it is found that the sign has not been removed and an affidavit of the employee reflecting this finding has been filed by the department in the closed administrative record in the case. When the department disassembles and removes a sign, it shall be done as expeditiously as reasonably possible during daylight hours of regular working days, and it shall be done in a manner so as to cause as little inconvenience to the property owner as is possible under the circumstances. The outdoor advertising sign shall be removed to the nearest convenient field or district office of the department which is suitable for storage of the sign.

(c) An itemization of the expenses incurred by the department for the disassembly, removal, transportation, and storage may be kept and a statement for the expenses incurred may be sent via certified mail or statutory overnight delivery to the party or parties against whom the order requiring the disassembly and removal is directed. It shall be the duty of the party or parties to reimburse the department for the expenses incurred by the department for the disassembly, removal, transportation, and storage of the sign. In the event the expenses are not paid in full within 30 days of receipt of the itemized statement, the department in its discretion may:

- (1) Institute a civil action to recover these unpaid expenses;
- (2) Utilize any other collection procedures authorized by law; or
- (3) Refuse to issue a permit or permits to the party or parties from whom the expenses are due for any outdoor advertising site until such expenses are paid.

However, if the party or parties dispute the itemized amount or dispute that the expenses are due, the party or parties may deposit the sum

claimed due with the department or post a bond with good security in an amount equal to the sum claimed due, such bond to be approved by the department, and the party or parties shall then request a hearing and the controversy shall be decided in accordance with Code Sections 50-13-13 through 50-13-18. Until such a final determination is made, the department shall not refuse to issue a permit or permits.

(d) If the party or parties against whom the order is directed pay the itemized expenses within 30 days from the receipt of the statement and requests the right to retrieve the stored remains of the sign at the time of payment, the department shall allow the party or parties to retrieve the sign remains within a reasonable period of time. If the party or parties against whom the order is directed fail to pay the itemized expenses within 30 days of the receipt of the statement, or if they timely pay the expenses but fail to request the right to retrieve the sign remains within a timely period or, if after making a timely request they fail to retrieve the sign remains within a timely period, then the department is authorized to dispose of the stored signs, or remnants thereof, in any lawful manner the department deems appropriate. Any other provisions of this or any other law to the contrary notwithstanding, any party or parties against whom any order is issued shall have the right to seek relief directly in the superior court. (Ga. L. 1971, Ex. Sess., p. 5, § 19; Code 1933, § 95A-931, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1980, p. 1017, § 9; Ga. L. 1982, p. 3, § 32; Ga. L. 1996, p. 6, § 32; Ga. L. 2000, p. 1589, § 3.)

Editor's notes. — Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provided that the 2000 amendment

was applicable to notices delivered on or after July 1, 2000.

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Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, § 95-2006 and former Ga. L. 1967, p. 423, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section.

Procedures for disposal of confiscated signs. — When advertising signs are removed from state highway property, the Department of Transportation must

first send a 30 day notice to the owner of the signs, and then store the signs for a reasonable length of time, during which time the owner may claim the signs; if the signs are unclaimed after a reasonable length of time such signs may be treated as abandoned property and disposed of in any manner, within the law, the department deems appropriate. 1971 Op. Att'y Gen. No. 71-24 (decided under former Ga. L. 1967, p. 423).

32-6-97. Construction of part.

Nothing in this part shall be construed to abrogate or affect any lawful ordinance, regulation, or resolution which is more restrictive

than this part. (Ga. L. 1971, Ex. Sess., p. 5, § 20; Code 1933, § 95A-932, enacted by Ga. L. 1973, p. 947, § 1.)

JUDICIAL DECISIONS

State law has not preempted police power authority of municipalities to regulate the location and maintenance of outdoor advertising signs within the municipalities' territorial jurisdictions. City

of Doraville v. Turner Communications Corp., 236 Ga. 385, 223 S.E.2d 798 (1976).

Cited in Lamar Co., L.L.C. v. City of Marietta, 538 F. Supp. 2d 1366 (N.D. Ga. 2008).

OPINIONS OF THE ATTORNEY GENERAL

General statutes control over local ordinances. — When issuing permits for outdoor advertising devices, the Department of Transportation must be guided by the law, notwithstanding the local zoning ordinances. 1975 Op. Att'y Gen. No. 75-24.

When permit may issue for advertising in forest-agricultural district. — If, in the Department of Transportation's uniform application of the law, one

or more of the following activities, that is, animal hospitals, golf courses, dredging, land fill, or the excavation of natural materials, boat marinas, bait houses, swimming beaches, and radio and television stations, are commonly or generally recognized as commercial, the department may issue permits for outdoor advertising devices in the forest-agricultural district. 1975 Op. Att'y Gen. No. 75-24.

RESEARCH REFERENCES

ALR. — Municipal power as to billboards and outdoor advertising, 58 ALR2d 1314.

Municipality's power to permit private

owner to construct building or structure overhanging or crossing the air space above public street or sidewalk, 76 ALR2d 896.

ARTICLE 4

LIMITED-ACCESS ROADS

32-6-110. "Local service road" defined.

As used in this article, the term "local service road" means any public road, whether existing at the time of the designation of a limited-access road or established thereafter, which serves the owner or occupant of any land or improvements abutting a limited-access road and which gives a means of ingress to and egress from any such lands or improvements. (Ga. L. 1955, p. 559, § 2; Code 1933, § 95A-935, enacted by Ga. L. 1973, p. 947, § 1.)

JUDICIAL DECISIONS

Cited in Dept. of Transp. v. Worley, 150 Ga. App. 768, 258 S.E.2d 595 (1979).

RESEARCH REFERENCES

ALR. — Abutting owner's right to damages for limitation of access caused by conversion of conventional road into limited-access highway, 42 ALR3d 13.

Measure and elements of damage for limitation of access caused by conversion of conventional road into limited-access highway, 42 ALR3d 148.

32-6-111. Establishment and maintenance of limited-access roads.

(a) The department or a county or a municipality in this state, acting alone or in cooperation with each other or with any federal, state, or local agency, is authorized and empowered to plan, designate, establish, regulate, abandon, alter, improve, maintain, and provide limited-access public roads wherever the department or such authorities consider that traffic conditions, present or future, justify such special facilities, provided that the term "traffic conditions, present or future, justifying such special facilities" shall be construed to mean a road having present traffic volumes requiring a minimum of four lanes of road or traffic volumes estimated to be accommodated by the road within a period not to exceed 20 years from the date of such consideration that will require a minimum of four lanes of road; provided, further, that within municipalities such authorization for limited-access public roads shall be subject to such municipal consent as may be provided by law, except that such municipal consent is not necessary for any limited-access road if the limited-access road includes space or other provisions for the construction of a heavy rail line as a part of a public transportation system or a rapid busway operating on a designated lane as a part of a public transportation system and such public transportation system is a part of a regional transportation plan developed by the metropolitan planning organization or other such similar body.

(b) The department or a county or a municipality, in addition to the specific powers granted in this article, also shall have and may exercise, relative to limited-access facilities, any and all additional authority vested in them relative to other public roads in their jurisdiction. (Ga. L. 1955, p. 559, § 3; Code 1933, § 95A-936, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1989, p. 163, § 1.)

Cross references. — Manner of operation of motor vehicles on divided highways and controlled-access roadways, § 40-6-50 et seq.

JUDICIAL DECISIONS

Resolution and ordinance authorizing land transfer constituted "municipal consent" as well as "cooperation" between city and the Department of Transportation and thus estopped city from revoking

the department's consent to construction of parkway. *DOT v. City of Atlanta*, 255 Ga. 124, 337 S.E.2d 327 (1985).

No need to condemn "right of access" not existing previously. — Con-

demnor creating a limited access highway does not have to condemn a purported "right of access" where none has previously existed. *DOT v. Hardin*, 231 Ga. 359, 201 S.E.2d 441 (1973).

Political subdivisions not liable for each others' torts in joint project. — While the law authorizes the cooperation of counties and municipal corporations with the Department of Transportation for the purpose of establishing limited access highways, there is nothing in the statute or in the law generally which expressly or by implication makes one of the cooperating governmental entities liable for the unilateral tortious acts of an

other cooperating governmental entity in a project of this type. *Madden v. Fulton County*, 102 Ga. App. 19, 115 S.E.2d 406 (1960).

Courts may, and the Court of Appeals does, take judicial cognizance that municipalities and counties are separately created and possess divergent powers; accordingly, the unilateral action of one may not be construed as imposing liability upon the other even though the action taken by the one may be under a statute authorizing a cooperative effort. *Madden v. Fulton County*, 102 Ga. App. 19, 115 S.E.2d 406 (1960).

RESEARCH REFERENCES

ALR. — Validity of restrictions as to points at which jitney bus passengers may be taken on and discharged, 6 ALR 110.

Effect of expiration of charter of turnpike or tollroad company on title to road, 30 ALR 206.

Abutting owner's right to damages or other relief for loss of access because of limited-access highway or street, 43 ALR2d 1072; 42 ALR3d 13; 42 ALR3d 148.

32-6-112. Acquisition of property and property rights.

The department, a county, or a municipality may acquire private property and property rights for limited-access facilities and service roads, including rights of access, of view, of air, and of light through gift, devise, purchase, or condemnation in the same manner as such governmental units are authorized by law to acquire such property or property rights in connection with public roads within their respective jurisdictions. Public property or an interest therein may be acquired for such purposes by the department or by a county or municipality by any method authorized by law for such acquisition other than condemnation. The acquisition of public property or an interest therein for such purposes by condemnation may be accomplished by the department pursuant to the provisions of subsection (b) of Code Section 32-3-4 when such acquisition is approved by the State Commission on the Condemnation of Public Property as provided in Code Section 50-16-183. As used in this Code section, the term "public property" has the meaning provided for in Code Section 50-16-180. In the process of acquiring property or property rights for any limited-access facility, the department or the county or municipality, in its discretion, may acquire an entire lot, block, or tract of land if, by so doing, the interest of the public will best be served. (Ga. L. 1955, p. 559, § 5; Code 1933, § 95A-938, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1986, p. 1187, § 5.)

Law reviews. — For annual survey of local government law, see 38 Mercer L. Rev. 289 (1986).

JUDICIAL DECISIONS

Department lacks power to condemn public property. — O.C.G.A. § 32-6-112 does not confer on the Department of Transportation the power to condemn public property as the law only authorizes the department to acquire

property “in the same manner” as the department is otherwise authorized by law to acquire property. DOT v. City of Atlanta, 255 Ga. 124, 337 S.E.2d 327 (1985).

RESEARCH REFERENCES

ALR. — Abutting owner’s right to damages or limitation of access caused by conversion of conventional road into limited-access highway, 42 ALR3d 13.

Measure and elements of damage for limitation of access caused by conversion of conventional road into limited-access highway, 52 ALR3d 148.

32-6-113. Design of limited-access roads.

Limited-access roads may be so designed as to regulate, restrict, or prohibit access thereto so as to best serve the traffic for which such facility is intended. The authority designating and establishing any limited-access road is authorized to divide and separate such highway into separate roadways by the construction of raised curbsings, central dividing sections, or other physical separations or by designating such separate roadways by signs, markers, or stripes; to designate the proper lanes for traffic moving in opposite directions; and to prohibit the making of turns at specified points. The designating authority may recommend to the commissioner of public safety or, if the roads in question are in a municipality, to the municipality that there be fixed on such roads and on the separate lanes thereof such rates of speed as are deemed in the public interest. No person shall have any right of ingress to or egress from or passage across any limited-access road to or from abutting lands except at the designated points to which access may be permitted and under such arrangements and conditions as may be specified from time to time. (Ga. L. 1955, p. 559, § 4; Code 1933, § 95A-937, enacted by Ga. L. 1973, p. 947, § 1.)

JUDICIAL DECISIONS

Property condemned for limited access highway. — In view of this section and the ruling in Department of Transp. v. Hardin, 231 Ga. 359, 201 S.E.2d 441 (1973), no right of access to the limited-access highway exists in one whose property is condemned for a high-

way. State Hwy. Dep’t v. Kinsey, 131 Ga. App. 770, 206 S.E.2d 835 (1974) (see O.C.G.A. § 32-6-113).

Contiguous landowners have no right of access to limited access highways. — This provision has effect of preventing a property right of access from

arising for benefit of contiguous landowners in newly created limited access highway. DOT v. Hardin, 231 Ga. 359, 201 S.E.2d 441 (1973) (see O.C.G.A. § 32-6-113).

No condemnation necessary when

no prior right of access. — Condemnor creating limited access highway does not have to condemn a purported "right of access" when none has previously existed. DOT v. Hardin, 231 Ga. 359, 201 S.E.2d 441 (1973).

RESEARCH REFERENCES

ALR. — Right of fee owner to use highway for agricultural or grazing purposes, 145 ALR 1356.

Laws of road or traffic regulation as

affected by closing of street or highway to general public or restriction of its use to special class of persons, 157 ALR 1164.

32-6-114. Designation of limited-access roads; elimination of intersections at grade.

The department, a county, or a municipality may designate and establish limited-access roads as new or additional facilities or may designate or establish existing public roads to be limited-access roads. The department or the counties or municipalities shall have authority to provide for the elimination of intersections at grade of limited-access highways with existing state, county, or municipal public roads or railroad rights of way by grade separation or local service roads or by closing off such roads or streets at the right of way boundary line of such limited-access road. After the establishment of any limited-access road, no public road which is not a part of such facility shall intersect the same at grade. No public road shall be opened into or connected with any established limited-access road without the consent of the governmental authority having jurisdiction of such limited-access road, in the same manner as such governmental units are authorized by law. (Ga. L. 1955, p. 559, § 6; Code 1933, § 95A-939, enacted by Ga. L. 1973, p. 947, § 1.)

Cross references. — Elimination of railroad grade crossings, § 32-6-193 et seq.

JUDICIAL DECISIONS

No condemnation necessary when no prior right of access. — Condemnor creating limited access highway need not

condemn purported "right of access" when none previously existed. DOT v. Hardin, 231 Ga. 359, 201 S.E.2d 441 (1973).

RESEARCH REFERENCES

ALR. — Laws of road or traffic regulation as affected by closing of street or highway to general public or restriction of

its use to special class of persons, 157 ALR 1164.

32-6-115. Conducting commercial enterprises or activities on property on which limited-access roads have been constructed.

Except as otherwise provided in this Code section and Code Section 32-6-116, no commercial enterprise or activities shall be authorized or conducted by the department or any other agency or by a county or municipality of the state, within or on the property on which have been constructed limited-access roads as defined in this article, provided that the term “commercial enterprise or activities” shall not be so construed as to prevent the installation of public utility facilities, to the extent that it is authorized by law, or as to prevent the proper management of property acquired for future construction of public roads, including limited-access roads, as such acquisition is authorized in Article 1 of Chapter 3 of this title. (Ga. L. 1955, p. 559, § 3; Code 1933, § 95A-936, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1973, p. 1401, § 1.)

JUDICIAL DECISIONS

Cooperating governmental entities not liable for each other’s torts. — While the law authorizes cooperation of counties and municipal corporations with the State Highway Department (now Department of Transportation) for the purpose of establishing limited access highways, there is nothing in statute or in the

law generally which expressly or by implication makes one of the cooperating governmental entities liable for unilateral tortious acts of another cooperating governmental entity in a project of this type. *Madden v. Fulton County*, 102 Ga. App. 19, 115 S.E.2d 406 (1960).

OPINIONS OF THE ATTORNEY GENERAL

Authority to issue license for rail line. — Department of Transportation has authority to issue a revocable license to a company constructing and operating a rapid rail passenger service line to cross

the rights-of-way of several state routes so long as consideration is received which represents a substantial benefit to the public. 1995 Op. Att’y Gen. No. 95-45.

RESEARCH REFERENCES

ALR. — Effect of expiration of charter of turnpike or tollroad company on title to road, 30 ALR 206.

Abutting owner’s right to damages or

other relief for loss of access because of limited-access highway or street, 43 ALR2d 1072; 42 ALR3d 13; 42 ALR3d 148.

32-6-116. Installation and operation of vending machines in safety rest areas on rights of way of state highway system.

The department is authorized to install or provide for the installation of and to operate or provide for the operation of vending machines in safety rest areas constructed on or located on the rights of way of the

state highway system. The vending machines may dispense nonalcoholic beverages, snacks, candy, cigarettes, and other articles as determined by the department to be necessary or desirable for the traveling public at reasonable prices. The prices charged for these products shall approximate the prevailing rate within the area for similar items so as not to compete unfairly with private enterprise, such prices to be set by the department. (Code 1933, § 95A-936.1, enacted by Ga. L. 1979, p. 132, § 3.)

Cross references. — Authority of department to provide information to traveling public at safety rest areas, § 32-2-4.

RESEARCH REFERENCES

ALR. — Effect of expiration of charter of turnpike or tollroad company on title to road, 30 ALR 206.

32-6-117. Lease of air rights.

The department is authorized to lease by negotiation air rights over existing or proposed limited-access highways for development as commercial enterprises or activities. Prior to entering into any negotiations for the lease of such air rights, the department shall advertise its intent to negotiate the lease of such air rights at least once a week for four consecutive weeks in one or more newspapers of general circulation in the county or counties where the air rights to be leased are situated and in one or more legal organs in Fulton County. Any person, firm, or corporation leasing such air rights shall reimburse the department for all costs, including administrative costs, incurred by the department in connection with the negotiation of said lease. Furthermore, when two or more offers are received by the department for a lease of air rights, the highest responsible offer shall be accepted by the department. The department shall establish a minimum negotiated price, based upon competent appraisal; and the final negotiated amount shall not be less than this appraisal. (Code 1933, § 95A-936, enacted by Ga. L. 1973, p. 1401, § 1.)

RESEARCH REFERENCES

ALR. — Effect of expiration of charter of turnpike or tollroad company on title to road, 30 ALR 206.

Abutting owner's right to damages or other relief for loss of access because of limited-access highway or street, 43 ALR2d 1072; 42 ALR3d 13; 42 ALR3d 148.

Municipal power as to billboards and outdoor advertising, 58 ALR2d 1314.

Municipality's power to permit private owner to construct building or structure overhanging or crossing the air space above public street or sidewalk, 76 ALR2d 896.

32-6-118. Establishment, maintenance, and disposal of local service roads.

In connection with the development of any limited-access facility, the department, a county, or a municipality is authorized to plan, designate, establish, use, regulate, alter, improve, maintain, abandon, and dispose of local service roads or streets or to designate as local service roads any existing public road and to exercise jurisdiction over service roads in the same manner as authorized over any other public roads on their public road systems if such local service roads are deemed necessary or desirable. Such local service roads shall be of appropriate design and shall be separated from the limited-access facility property by means of any or all devices designated as necessary or desirable by the proper authority. (Ga. L. 1955, p. 559, § 7; Code 1933, § 95A-940, enacted by Ga. L. 1973, p. 947, § 1.)

JUDICIAL DECISIONS

Cited in DOT v. Foremost Realty, Inc.,
135 Ga. App. 377, 218 S.E.2d 41 (1975).

32-6-119. Effect of article on Coastal Highway District and Coastal Scenic Highway Authority.

This article shall in no way take away from, impair, or infringe upon the authority, duty, power, or obligations of the Coastal Highway District or the Coastal Scenic Highway Authority. (Ga. L. 1955, p. 559, § 9; Code 1933, § 95A-941, enacted by Ga. L. 1973, p. 947, § 1.)

ARTICLE 5

COMMERCIAL PROPERTY AND SUBDIVISIONS

PART 1

COMMERCIAL PROPERTY

32-6-130. “Commercial driveway” defined.

As used in this part, the term “commercial driveway” means any private entrance, exit, ramp, tunnel, bridge, side road, or other vehicular passageway to any property used for commercial purposes, except a farm or a dwelling house not exceeding a four-family capacity, and leading to or from any public road on the state highway system. (Code 1933, § 95A-942, enacted by Ga. L. 1973, p. 947, § 1.)

32-6-131. Permit requirement as to construction or improvement of commercial driveways; authority of department to close driveways for violations.

It shall be unlawful for any person to construct a new commercial driveway or to reconstruct, alter, or improve any existing commercial driveway without first obtaining a permit from the department therefor and complying with the department regulations authorized by Code Section 32-6-133. A violation of this Code section, in addition to being unlawful, shall entitle the department to barricade, displace, or otherwise close such driveway and to collect the costs therefor from the violator as provided in Code Section 32-6-134. (Code 1933, § 95A-943, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1974, p. 1422, § 34.)

JUDICIAL DECISIONS

Purpose of section. — By requiring permits for commercial access to state roads, the legislative intent was to promote public safety by mandating Department of Transportation oversight as to whether, among other things, every new or changed commercial driveway is, in fact, safe to the public. *Keith v. Beard*, 219 Ga. App. 190, 464 S.E.2d 633 (1995).

Construction of unpermitted driveway negligence per se. — Motorcyclist who was injured in a collision with a vehicle that pulled out from an unpermitted commercial driveway into the motorcyclist's path was within the category of persons protected by O.C.G.A. § 32-6-131 and, from the evidence, the jury could determine that the construction or maintenance of the driveway in violation of that section would be negligence per se. *Keith v. Beard*, 219 Ga. App. 190, 464 S.E.2d 633 (1995).

Exclusion of evidence proper. — In a wrongful death action, the trial court did not err by granting the defendants' motion in limine to exclude evidence related to an alleged violation of O.C.G.A. § 32-6-131 with regard to the plaintiff's allegation that the defendants violated § 32-6-131 or were negligent per se in failing to get a permit for a speed bump in which the decedent collided as the trial court properly reasoned that the relationship between the permitting process, the speed-bump, and the accident involving the decedent was too tenuous, making the evidence irrelevant; the plaintiff failed to include the theory of the alleged statutory and regulatory violation in the pretrial order; and the plaintiff failed to provide the defendants' counsel with notice of the regulations until the day before trial. *Land v. Ricks*, 288 Ga. App. 497, 654 S.E.2d 643 (2007).

32-6-132. Change or substitution of existing commercial driveways.

Any commercial driveway constructed prior to July 1, 1973, and adjudged by the department to be unsafe for the traveling public or in violation of department regulations promulgated pursuant to Code Section 32-6-133 may be changed or caused to be changed by the department so as to eliminate any unsafe features; or it may be closed or displaced by substitution therefor of another driveway at such place or of such design as may be deemed safe. Liability for the expense of such change or substitution will be determined in accordance with Code

Section 32-6-134. (Code 1933, § 95A-944, enacted by Ga. L. 1973, p. 947, § 1.)

32-6-133. Promulgation of regulations; charges for permits for commercial driveways.

(a) The department is granted the authority to promulgate uniform and reasonable regulations to carry out the provisions of this part. In making such regulations the department shall specify among other things the circumstances under which commercial driveway permits may be issued or revoked, provided that such regulations shall not deprive the landowner of reasonable access to the public road on the state highway system.

(b)(1) Where a person seeks a permit to construct, reconstruct, alter, or improve a commercial driveway and the commercial driveway will lie in whole or in part upon a parcel of land acquired for the state highway system from such person or the immediately preceding owner of such property from whom such person acquired title to such property, the total amount of money charged to such person as a condition of obtaining the permit shall not exceed the compensation received by such person or the immediately preceding owner of such property from whom such person acquired title to such property for such parcel of land upon its acquisition for the state highway system. This limitation shall apply to the total of all amounts of money of whatever character charged to such person as a condition of obtaining the permit, including without limitation any and all amounts charged for title to or use of land and any and all fees or other costs of any nature whatsoever. This subsection shall constitute only a maximum limitation upon the total amount of money charged under such circumstances and shall not in any manner be construed to establish a minimum amount of money to be charged under such circumstances.

(2) Except in the case of heirs and assigns, the limitation of the department to require a payment of more than the maximum amount received for such property as provided in paragraph (1) of this subsection shall last for only a ten-year period from the date of the initial acquisition of property by the department.

(3) This subsection shall apply with respect to land acquired for the state highway system prior to April 15, 1996, as well as land so acquired on or after April 15, 1996. (Code 1933, § 95A-946, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1996, p. 1010, § 4.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1996, in subsection (b), “ten-year” was substituted for “ten year” in paragraph (b)(2) and, in paragraph (b)(3), “April 15, 1996,” was substituted for “its effective date” and

"April 15, 1996" was substituted for "the effective date of this subsection" at the end.

JUDICIAL DECISIONS

Cited in DOT v. Worley, 150 Ga. App. 768, 258 S.E.2d 595 (1979).

32-6-134. Procedure by department upon discovery of violation of Code Section 32-6-131; liability for expenses incurred in connection with changes made in commercial driveways.

(a) Upon discovery of a violation of Code Section 32-6-131, the department shall give written notice by certified mail or statutory overnight delivery to the offender to commence removing any offending condition within ten days of receipt of such notice. Upon failure to comply with such notice or to complete such work within a reasonable time after such notice, the department may remove, prevent, or rectify any offending condition by barricading or closing the commercial driveway or a portion thereof, or by other methods, and certify the expenses thereof for collection to the Attorney General.

(b) Where, in accordance with Code Section 32-6-132, a change is made in a commercial driveway in existence on July 1, 1973, the department shall be liable for the expenses thereof, provided that the commercial driveway so changed did not, before such change, provide an unsafe and unreasonable access from the abutting property, considering that there exists in the owner of the abutting property a private property right to have a reasonable access from such property to the public road as the same was and would have continued to be according to the mode of its original use. Before making any change or substitution in a commercial driveway in existence on July 1, 1973, when the department has determined that it shall not bear the expenses thereof, the department first shall give written notice to the abutting property owner to begin within 90 days the necessary change in or substitution of the driveway, provided that in the case of a nuisance such notice need be given only ten days in advance. Upon failure of the abutting property owner to complete the necessary change or substitution, the department may perform the necessary work and certify the expenses thereof to the Attorney General for collection. (Code 1933, § 95A-945, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 2000, p. 1589, § 3.)

Editor's notes. — Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provided that the 2000 amendment was applicable to notices delivered on or after July 1, 2000.

32-6-135. Effect of part on authority of counties and municipalities to regulate highways, roads, and streets.

Nothing in this part is intended to limit the authority of a county or a municipality to regulate highways, roads, or streets under their exclusive jurisdiction. (Code 1933, § 95A-947, enacted by Ga. L. 1973, p. 947, § 1.)

PART 2**SUBDIVISIONS**

Cross references. — Regulation of sale of subdivided lands generally, § 44-3-1 et seq.

32-6-150. “Subdivision” defined.

As used in this part, the term “subdivision” means all divisions of a tract or parcel of land into two or more lots, buildings, sites, or other divisions for the purpose, whether immediate or future, of sale, legacy, or building development; includes all division of land involving a new public road or a change in existing public roads or new drives, driveways, access ways, or changes that require access to the state right of way; includes resubdivision; and, where appropriate to the context, relates to the process of subdividing or to the land or area subdivided; provided, however, that the following are not included within this definition:

(1) The combination or recombination of portions of previously platted lots where the total number of lots is not increased and the resultant lots are equal to the standards of the municipality; and

(2) The division of land into parcels of five acres or more where no new street is involved. (Code 1933, § 95A-948, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 2003, p. 613, § 1.)

32-6-151. Department recommendation as to approval or rejection of plat submitted by planning commission.

A planning commission shall submit two copies of the proposed subdivision plat to the department if such proposed subdivision includes or abuts on any part of the state highway system or where the proposed subdivision requires access to the state highway system. The department, within 30 days of receipt of the plat, shall recommend approval and note its recommendation on the copy to be returned to the planning commission or recommend rejection. Failure of the department to act within this 30 day period shall constitute approval. If the

plat is recommended for rejection, the reasons for rejection and requirements for approval shall be given the commission in writing; such rejection shall be binding on the planning commission unless the planning commission, by official action recorded in its minutes, overrules such department action. (Code 1933, § 95A-949, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 2003, p. 613, § 2.)

Cross references. — Regulation of sale of subdivided lands generally, § 44-3-1 et seq.

32-6-152. Department approval or rejection of plat submitted by proprietor of subdivision.

The proprietor of a subdivision to be developed within a county or municipality which has not created a planning commission shall submit three copies of the plat to the department if such a proposed subdivision includes or abuts on any part of the state highway system or where the proposed subdivision requires access to the state highway system. The department, within 30 days of receipt of the plan, shall approve or reject it, with written reasons for such rejection and requirements for approval, and note such action on the copy to be returned to the proprietor as well as on the copy to be returned to the county or municipal governing authority concerned. Such rejection shall be binding on the county or municipality concerned unless the county or municipal governing authority concerned, by official action recorded in its minutes, overrules such department action. Failure of the department to act within the 30 day period provided in this Code section shall constitute approval. (Code 1933, § 95A-950, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 2003, p. 613, § 3.)

Cross references. — Regulation of sale of subdivided lands generally, § 44-3-1 et seq.

32-6-153. Factors to be considered by department in making recommendations to planning commissions and in approving or rejecting plats.

Where the department is required to make recommendations to a planning commission under Code Section 32-6-151 or to approve a proposed plat under Code Section 32-6-152, the department, in addition to considering other factors, shall base its recommendation or approval on the following being provided for in the plat:

- (1) Dedication to the department in fee simple of any portion of the subdivision which includes any part of the state highway system,

such dedication to include land necessary for future widening of the state highway system; and

(2) An adequate provision for traffic safety in laying out public roads, drives, driveways, or access ways which enter the state highway system. (Code 1933, § 95A-951, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 2003, p. 613, § 4.)

32-6-154. Effect of part on requirement as to commercial driveway permit.

Nothing in this part shall dispense with the requirement of obtaining a commercial driveway permit as set forth in Part 1 of this article. (Code 1933, § 95A-952, enacted by Ga. L. 1973, p. 947, § 1.)

ARTICLE 6

PUBLIC UTILITIES

PART 1

IN GENERAL

Administrative rules and regulations. — Maintenance, relocation, etc., of facilities of public utilities, Official Compilation of the Rules and Regulations of the State of Georgia, State Department of Transportation, Chapter 672-11.

32-6-170. Payment by Department of Transportation of costs of removal, relocation and adjustment of utility facilities necessitated by construction of public roads.

(a) The department is authorized to pay or participate in the payment of the costs of removing, relocating, or adjusting any of the following facilities or any component part thereof if they are owned by a municipal corporation, county, state agency, or by an authority created under the laws of Georgia pertaining to public utilities, without regard to whether such facilities were originally installed upon rights of way of the state highway system, a county road system, or a municipal street system, where such removal, relocation, or adjustment is made necessary by the construction or maintenance of any public road by the department: water distribution and sanitary sewer facilities and systems for producing, transmitting, or distributing communications, power, electricity, light, heat, gas, steam, waste, and storm water not connected with highway drainage, including fire and police signals, traffic-control devices, and street lighting systems.

(b) The department is authorized to pay or participate in the payment of the costs of removing, relocating, or making necessary adjustments to any of the following facilities or any component part thereof if

they are owned by a public utility that is publicly, privately, or cooperatively owned, without regard to whether such facilities were originally installed upon rights of way of the state highway system, a county road system, or a municipal street system, where the department has made the determination that (i) such payments are in the best interest of the public and necessary in order to expedite the staging of the project; and (ii) the costs of the removal, relocation, or adjustment of such facilities are included as part of the contract between the department and the department's roadway contractor for the project, provided that such removal, relocation, or adjustment is made necessary by the construction or maintenance of a public road by the department: water distribution and sanitary sewer facilities and systems for producing, transmitting, or distributing communications, power, electricity, light, heat, gas, steam, waste, and storm water not connected with highway drainage, including fire and police signals, traffic-control devices, and street lighting systems.

(c) As to municipal corporations, counties, state agencies, authorities controlled by such municipal corporations, counties, or other state agencies, and public utilities that are publicly, privately, or cooperatively owned, the department is authorized to waive provisions in existing permits and agreements in conflict with this article.

(d) The costs of removing, relocating, or adjusting the facilities listed in subsection (a) of this Code section, which costs the department is authorized to pay or participate in by this Code section, shall be limited to the costs of removing, relocating, or adjusting those facilities which are physically in place and in conflict with proposed construction and, where replacement is necessary, to the costs of replacement in kind. That proportion of the costs representing improvement or betterment in a facility shall be excluded from the costs eligible for payment or participation by the department under this Code section, except to the extent that such improvement or betterment is made necessary by the public road construction or maintenance.

(e) All costs incurred by the department under this Code section shall be deemed to be a part of the costs of the project requiring removal, relocation, or adjustment of any of the facilities listed in subsections (a) and (b) of this Code section. (Ga. L. 1961, p. 453, §§ 1-4; Ga. L. 1968, p. 345, §§ 1-3; Code 1933, § 95A-1001, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 2007, p. 30, § 1/SB 19.)

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, §§ 95-1701, 95-1715, 95-1724, which were

subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section.

Department's authority to take property for relocation of gas line. — State Highway Department (now Department of Transportation) is authorized to take property for relocation of gas company's interstate gas line when it is in the interest of safety, and prevents inconve-

nience to the public using gas line and where acquisition is in furtherance of and reasonable for public state highway use. *Benton v. State Hwy. Dep't*, 111 Ga. App. 861, 143 S.E.2d 396 (1965) (decided under former Code 1933, §§ 95-1701, 95-1715, and 95-1724).

RESEARCH REFERENCES

ALR. — Constitutionality of state legislation to reimburse public utilities for cost of relocating their facilities because of highway construction, conditioned upon

federal reimbursement of the state under the terms of Federal-Aid Highway Act (23 U.S.C. § 123), 75 ALR2d 419.

32-6-171. Authority of department to order removal, relocation, or adjustment of utility facilities; giving notice to utility; relocation procedures; procedure by department upon failure of utility to remove facility; damages; mediation.

(a) Any utility using, occupying, or adjacent to any part of a public road which the department has undertaken to improve or intends to improve shall remove, relocate, or make the necessary adjustments to its facility when, in the reasonable opinion of the department, the facility constitutes an obstruction or interference with the use or safe operation of such road by the traveling public or when, in the reasonable opinion of the department, the facility will interfere with such contemplated construction or maintenance. In undertaking such removal, relocation, or adjustment, if the department has notified the utility in writing that the facility constitutes an obstruction or interference with the construction, use, or safe operation of the roadway, then the utility shall be exempt from the requirements of Code Sections 22-1-10 and 22-1-10.1. Nothing in this Code section shall be construed so as to deprive any utility relocated from a location in which it owned a property interest of compensation for such interest.

(b) Whenever the department reasonably determines it necessary to have a utility facility removed, relocated, or adjusted, the department shall give to the utility at least 60 days' written notice directing it to begin the physical removal, or relocation, or adjustment of such utility obstruction or interference. If such notice is part of a highway improvement project, it is normally provided at the date of advertisement or award. However, prior to the notice directing the physical removal, relocation, or adjustment of a utility facility, the utility and the department shall adhere to the department's utility relocation procedures for public road improvements which shall include but not be limited to the following:

(1) The submission by the department to the utility of a letter and set of preliminary plans for the proposed highway improvement project and the utility's submission to the department of written confirmation acknowledging receipt of the plans;

(2) The utility's submission to the department of plans showing existing and proposed locations of facilities within a reasonable time as specified by the department in the letter required under paragraph (1) of this subsection; provided, however, that the time specified by the department shall not be sooner than 30 days and shall not be greater than 120 days. If the utility fails to submit to the department the plans within the allotted 120 days, the department may no longer be required to pay the costs of removal, relocation, or adjustment as prescribed in subsection (b) of Code Section 32-6-170 even if those costs had previously been included in the contract between the department and the department's contractor; instead, such costs shall be borne by the utility; and

(3) The utility's submission shall include with the plans a work plan in a manner and time frame established by the department's written procedures and instructions.

If the utility does not thereafter begin removal, relocation, or adjustment within the time specified in the work plan, the department may give the utility a final notice directing that such removal, relocation, or adjustment shall commence not later than ten days from the receipt of such final notice. If such utility does not, within ten days from receipt of such final notice, begin to remove, relocate, or adjust the facility or, having so begun removal, relocation, or adjustment, thereafter fails to complete the removal, relocation, or adjustment within the time specified in the work plan, the department may exercise its right to obtain injunctive relief as provided in Code Section 32-6-175. If utility removal, relocation, or adjustment work is found necessary after the letting date of the highway improvement project, the utility shall provide a revised work plan within 30 calendar days after becoming aware of such additional work or upon receipt of the department's written notification advising of such additional work. The utility's revised work plan shall be reviewed by the department to ensure compliance with additional work.

(c) In addition to the foregoing, the owner of the utility may be responsible for and liable to the department or its contractors for documented damages resulting solely from failure on the part of the utility to comply with requirements of the submitted and approved work plan under the control of the utility. If the utility owner fails to provide a work plan or fails to complete the removal, relocation, or adjustment of its facilities in accordance with the work plan approved by the department, then the utility owner may be liable to the

contractor for delay costs incurred by the contractor and approved by the department which are caused by or which grow out of the failure of the utility owner to carry out and complete its work in accordance with the approved work plan or in a timely and reasonable manner if a work plan or revised work plan was not submitted. Upon notification in writing by the department or its contractors that the utility is liable for damages or delay costs, the utility company shall have 45 days from receipt of such letter to either pay the amount of the damages or delay costs to the department or its contractors or to request mediation as provided in subsection (d) of this Code section.

(d) The department's utility relocation procedures shall include, in addition to the provisions set forth in subsection (b) of this Code section, provisions for the establishment of mediation boards to hear and decide disputes that may arise between the department and the utility concerning (i) a work plan or revised work plan that has been submitted by the utility but not approved by the department; (ii) a contractor's claim for delay costs or other damages related to the utility's removal, relocation, or adjustment of its facilities; and (iii) any other matter related to the removal, relocation, or adjustment of the utility's facilities pursuant to this Code section. Such procedures shall include but not be limited to the following:

(1) Each mediation board shall consist of one mediator who shall be designated by the department, one mediator who shall be designated by the utility, and an independent mediator who shall be mutually selected by the department's designee and the utility's designee and shall serve as the presiding officer of the mediation board;

(2) The mediators shall hold a hearing with regard to each dispute that is submitted to the mediation board for resolution, shall provide notice of the hearing to each party involved in the dispute, and shall afford each party an opportunity to present evidence at the hearing; provided, however, that unless the parties otherwise agree, the provisions of Code Sections 50-13-13, 50-13-14, and 50-13-15, relating to proceedings in a contested case under the Georgia Administrative Procedure Act, shall not apply to the hearing before the mediation board;

(3) The mediators shall decide each issue presented to the mediation board by a majority vote of the mediators;

(4) The mediators shall issue a final decision in writing with regard to each dispute that is submitted to the mediation board for resolution and shall serve a copy of the final decision on each party involved in the dispute; and

(5) All final decisions of the mediation board shall be subject to de novo review in the Superior Court of Fulton County by way of a

petition for judicial review filed by the department or the utility within 30 days after service of the final decision.

(e) The department shall promulgate reasonable regulations governing the mediation board, including the procedural rules governing the mediation of a contested case and the creation of a list of qualified mediators. The department shall consult with the Georgia Utilities Coordinating Council in the development of these regulations, and these regulations shall be adopted by the department on or before January 1, 2008. (Code 1933, § 95A-1002, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 2007, p. 30, § 2/SB 19; Ga. L. 2008, p. 922, § 1/HB 1026.)

Law reviews. — For annual survey article on real property law, see 52 Mercer L. Rev. 383 (2000).

JUDICIAL DECISIONS

Cited in *Bibb County v. Georgia Power Co.*, 241 Ga. App. 131, 525 S.E.2d 136 (1999).

RESEARCH REFERENCES

ALR. — Constitutionality of state legislation to reimburse public utilities for cost of relocating their facilities because of highway construction, conditioned upon federal reimbursement of the state under the terms of Federal-Aid Highway Act (23 U.S.C. § 123), 75 ALR2d 419.

32-6-172. Authority of department to obtain replacement right of way for relocated utility.

(a) Whenever a public road improvement necessitates the acquisition by the department of a utility's privately owned rights of way and the relocation of such utility's facilities, the department may, with the written consent of the utility, provide a replacement right of way.

(b) Whenever a public road improvement requires the relocation of a utility occupying public road rights of way, the department may, at the written request of such utility, provide to the utility a right of way which is not on a public road right of way. In this event, the utility shall reimburse the department for the acquisition costs.

(c) Title to property acquired for utility relocations under subsection (a) or (b) of this Code section and as authorized by Code Section 32-3-1 may be transferred to such utility as authorized in Code Section 32-7-3. However, the procedures for sale of property as set forth in Code Section 32-7-4 shall not be applicable to the transfer of property acquired for utility relocation. Any such property transfer to the utility shall be

conveyed by the execution of a quitclaim deed by the commissioner. (Code 1933, § 95A-1003, enacted by Ga. L. 1973, p. 947, § 1.)

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under Ga. L. 1961, p. 517, as amended, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section.

Property appropriation for location of gas company's interstate gas line. — State Highway Department (now

Department of Transportation) may take property for relocation of gas company's interstate gas line when it was in interest of safety and prevents inconvenience to public using gas line and when acquisition is in furtherance of and reasonably for a public state highway use. *Benton v. State Hwy. Dep't*, 111 Ga. App. 861, 143 S.E.2d 396 (1965) (decided under Ga. L. 1961, p. 517).

RESEARCH REFERENCES

ALR. — Constitutionality of state legislation to reimburse public utilities for cost of relocating their facilities because of highway construction, conditioned upon

federal reimbursement of the state under the terms of Federal-Aid Highway Act (23 U.S.C. § 123), 75 ALR2d 419.

32-6-173. Payment of expenses of removal and relocation of utility facilities.

The expenses incurred by the department as a result of utility removal and relocation pursuant to subsection (b) of Code Section 32-6-171, including the cost of acquiring new land or interests therein pursuant to subsection (b) of Code Section 32-6-172, shall be paid out of the available appropriations of the department for the construction or maintenance of public roads. A statement of such expenses shall be submitted to the utility, which shall make payment to the department. In the event the utility does not make payment or arrange to make payment to the department within 60 days after the receipt of said statement, the department shall certify the amount for collection to the Attorney General. However, nothing in this Code section shall restrict the authority of the department pursuant to Code Section 32-6-170 to pay any or all of the expenses of removal and relocation of government owned utilities; and, furthermore, nothing in this article shall be construed so as to deprive any utility, relocated from a location in which it owned a property interest, of compensation for such property interest. (Code 1933, § 95A-1004, enacted by Ga. L. 1973, p. 947, § 1.)

JUDICIAL DECISIONS

Utility's right to compensation for loss of easement. — County may require a utility, at the utility's expense, to relocate the utility's equipment, even if the

county's right-of-way was obtained after the utility had obtained an easement for the equipment. But in turn the utility may seek just and adequate compensation for

the loss of the use of the utility's old easement, which loss would include the costs necessary to relocate to the new

easement. *Bibb County v. Georgia Power Co.*, 241 Ga. App. 131, 525 S.E.2d 136 (1999).

RESEARCH REFERENCES

ALR. — Constitutionality of state legislation to reimburse public utilities for cost of relocating their facilities because of highway construction, conditioned upon

federal reimbursement of the state under the terms of Federal-Aid Highway Act (23 U.S.C. § 123), 75 ALR2d 419.

32-6-174. Promulgation of regulations by department.

The department may promulgate reasonable regulations governing the installation, construction, maintenance, renewal, removal, and relocation of pipes, mains, conduits, cables, wires, poles, towers, tracks, traffic and other such signals, and other equipment and appliances of any utility in, on, along, over, or under any part of the state highway system or any public road project which the department has undertaken or agreed to undertake or which has been completed by the department pursuant to its authority. In addition to the requirements of such department regulations, it shall be the responsibility of the utility to obtain whatever franchise is required by law. (Code 1933, § 95A-1005, enacted by Ga. L. 1973, p. 947, § 1.)

Law reviews. — For annual survey of administrative law, see 56 Mercer L. Rev. 31 (2004). For annual survey of local gov-

ernment law, see 57 Mercer L. Rev. 289 (2005).

JUDICIAL DECISIONS

Cited in *Georgia Power Co. v. Collum*, 176 Ga. App. 61, 334 S.E.2d 922 (1985).

RESEARCH REFERENCES

ALR. — State regulation of rates to consumers of gas or electricity transported across state lines for light or power purposes, 7 ALR 1094.

Constitutionality of state legislation to reimburse public utilities for cost of relocating their facilities because of highway construction, conditioned upon federal re-

imbursement of the state under the terms of Federal-Aid Highway Act (23 U.S.C. § 123), 75 ALR2d 419.

Placement, maintenance, or design of standing utility pole as affecting private utility's liability for personal injury resulting from vehicle's collision with pole within or beside highway, 51 ALR4th 602.

32-6-175. Right to injunctive relief.

The department, the county or municipality, or the railroad or utility concerned may petition for an injunction to enforce the performance of any duty or act imposed by this article or for an order to restrain the breach of any duty or the commission of any act imposed or prohibited

or unauthorized by this article. (Code 1933, § 95A-1019, enacted by Ga. L. 1973, p. 947, § 1.)

RESEARCH REFERENCES

ALR. — Liability of highway district for damages for improper condition of highway, 49 ALR 1075.

PART 2

RAILROADS

32-6-190. Duty to maintain grade crossings.

Any railroad whose track or tracks cross a public road at grade shall have a duty to maintain such grade crossings in such condition as to permit the safe and reasonable passage of public traffic. Such duty of maintenance shall include that portion of the public road lying between the track or tracks and for two feet beyond the ends of the crossties on each side and extending four feet beyond the traveled way or flush with the edge of a paved shoulder, whichever is greater, of such crossing. (Code 1933, § 95A-1006, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 2002, p. 1050, § 1.)

Administrative rules and regulations. — Criteria for elimination of highway-rail grade crossings, Official Compilation of the Rules and Regulations of the State of Georgia, State Department of Transportation, Chapter 672-16.

Law reviews. — For note on the 2002 amendment of this Code section, see 19 Ga. St. U.L. Rev. 213 (2002).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1895, § 2220, former Code 1910, § 2673, and former Code 1933, § 94-503, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section.

Section applies to road crossings, not to roads running parallel to railroads. *Collier v. Georgia R.R.*, 76 Ga. 611 (1886) (decided under former Code 1895, § 2220).

Section's applicability to excavation made for purpose of laying track. — Provisions of section apply to railroad company where public road is crossed only

by an excavation made for purpose of laying therein, across such public road, a railroad track of the company, and before any railroad track has been laid and before work of constructing railroad is completed across such public road. *Mixon v. Savannah & A. Ry.*, 152 Ga. 670, 111 S.E. 197 (1922) (decided under former Code 1910, § 2673).

Duty may extend beyond two feet. — O.C.G.A. § 32-6-190 strongly implies that the railroad's duty may extend beyond the two feet mentioned in the statute. *Easterwood v. CSX Transp., Inc.*, 933 F.2d 1548 (11th Cir. 1991), *aff'd*, 507 U.S. 658, 113 S. Ct. 1732, 123 L. Ed. 2d 387 (1993).

Effect of federal highway aid provi-

sions. — In the absence of a decision by a federally designated policymaker, state common law liabilities relating to the adequacy of railroad grade crossings are not affected by the federal highway aid provisions of the United States Code. *Easterwood v. CSX Transp., Inc.*, 933 F.2d 1548 (11th Cir. 1991), *aff'd*, 507 U.S. 658, 113 S. Ct. 1732, 123 L. Ed. 2d 387 (1993).

No compensation to railroad for mere enlargement of crossing. — When crossing of railroad track and public road is partially shifted in one direction and is more in nature of an enlargement than an entire change, railroad company is not entitled to compensation for cost of making structural change of the company's right of way at the crossing. *State Hwy. Bd. v. Georgia R.R. & Banking Co.*, 47 Ga. App. 652, 171 S.E. 176 (1933) (decided under former Code 1910, § 2673).

Common law action against railroad precluded. — Georgia Code of Public Transportation precluded a common law cause of action against a railroad for the failure to install adequate protective devices at a grade crossing on a public road since the railroad had not been requested to do so by the appropriate governmental entity. *Southern Ry. v. Georgia Kraft Co.*, 188 Ga. App. 623, 373 S.E.2d 774 (1988).

Railroad must maintain prescriptive public crossings. — When a crossing becomes a public crossing, by implication through being used by public and worked or treated by public authorities as part of a system of public highways in place where passageway is claimed and continuously used for a period of over 20 years, the crossing or passageway is considered the same as other public streets and highways intersecting railroads within a city's limits, and provisions of this section prevail. *Atlantic Coast Line R.R. v. Layne*, 88 Ga. App. 674, 77 S.E.2d 565 (1953) (decided under former Code 1933, § 94-503).

Liability where tracks of two railroad companies cross on same street.

— When there is a crossing of tracks of two railroad companies in a city street, it is ordinarily, as between the companies, the duty of the crossing company, at whose instance and for whose benefit the crossing was made, to keep the crossing in repair. *Macon Ry. & Light Co. v. Southern Ry.*, 28 Ga. App. 339, 110 S.E. 912, *cert. denied*, 28 Ga. App. 819 (1922) (decided under former Code 1910, § 2673).

When track of a railroad company crosses track of another railroad company in a city street, the duty of keeping the crossing in repair rests upon both companies, and either may and should make all necessary repairs, but the company making the repairs may recover the expense of such repairs from other company, if, as between the companies, the duty of making repairs was upon the latter. *Macon Ry. & Light Co. v. Southern Ry.*, 23 Ga. App. 339, 110 S.E. 912, *cert. denied*, 28 Ga. App. 819 (1922) (decided under former Code 1910, § 2673).

Railroad company's failure to comply with the company's duties under the law is negligence as a matter of law. *Southern Ry. v. Brooks*, 112 Ga. App. 324, 145 S.E.2d 76 (1965) (decided under former Code 1933, § 94-503).

Railroad liability for employee's or independent contractor's negligence.

— Wrongful act or negligence of employee or independent contractor in failing to keep public road in good order where crossed by an excavation made for purpose of constructing a railroad therein, being an act in violation of this section, the railroad is not absolved from liability upon ground that alleged tort was committed by employee or independent contractor. *Mixon v. Savannah & A. Ry.*, 28 Ga. App. 390, 111 S.E. 690 (1922) (decided under former Code 1910, § 2673).

Cited in *Central of Ga. R.R. v. Schnadig Corp.*, 139 Ga. App. 193, 228 S.E.2d 165 (1976); *Peluso v. Central of Ga. R.R.*, 165 Ga. App. 215, 299 S.E.2d 51 (1983).

RESEARCH REFERENCES

ALR. — Customary or statutory signal from train as measure of railroad's duty as

to warning at highway crossing, 5 ALR2d 112.

Duty of railroad company to maintain flagman at crossing, 24 ALR2d 1161.

32-6-191. Responsibility for construction of new grade crossings and relocation of existing grade crossings.

(a) Where a new grade crossing results from the construction of a new or relocated railroad line, the railroad shall be responsible for and bear all expenses of the construction of such grade crossing. The department, when such a grade crossing is on the state highway system, a county, when such a grade crossing is on its county road system, or a municipality, when such a grade crossing is on its municipal street system, may impose such terms and conditions on the nature and manner of construction of such a grade crossing, including the installation of protective devices, as may be necessary for the safe and reasonable passage of public traffic.

(b) Where a new grade crossing results from the construction of a new or relocated public road, the department, when such road is on the state highway system, a county, when such road is on its county road system, or a municipality, when such road is on its municipal street system, shall be responsible for and bear all expenses of the construction of such grade crossing. The railroad may impose such terms and conditions on the nature and manner of construction of such a grade crossing, including the installation of protective devices, as may be reasonably necessary for the safety and convenience of the traveling public. While on the right of way of any railroad during the construction of any such grade crossing, employees or contractors of the department or any county or municipality shall be subject to such rules and regulations of the railroad as may be reasonably necessary for the protection of its traffic, passengers, property, and its safe operation.

(c) Notwithstanding subsection (b) of this Code section, the department, in respect to a grade crossing on the state highway system, a county, in respect to a grade crossing on its county road system, or a municipality, in respect to a grade crossing on its municipal street system, may close and relocate an existing grade crossing by relocation of a part of the public road involved, whenever such closing and relocation is reasonably necessary in the interest of public safety; and the procedure for such closing and relocation and the division of the costs of construction shall be the same as provided in Code Sections 32-6-194 and 32-6-195 for elimination of a grade crossing by construction of an underpass or overpass.

(d) Where there is disagreement as to the terms and conditions imposed on the nature and manner of construction by the department, county, or municipality pursuant to subsection (a) of this Code section or by the railroad pursuant to subsection (b) of this Code section, the

department shall make such determination after reasonable opportunity for a hearing is given to all parties concerned. (Code 1933, § 95A-1007, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1982, p. 3, § 32; Ga. L. 2002, p. 1050, § 3.)

Law reviews. — For note on the 2002 amendment of this Code section, see 19 Ga. St. U.L. Rev. 213 (2002).

JUDICIAL DECISIONS

Section applicable to new grade crossings only. — O.C.G.A. § 32-6-191 by the statute's plain language applies only to a new grade crossing and is inap-

plicable if there is neither a new nor relocated railroad line. Chatham County Comm'rs v. Seaboard Coast Line R.R., 169 Ga. App. 607, 314 S.E.2d 449 (1984).

RESEARCH REFERENCES

ALR. — Customary or statutory signal from train as measure of railroad's duty as to warning at highway crossing, 5 ALR2d 112.

32-6-192. Construction of underpass or overpass in lieu of grade crossing; procedure; costs; maintenance.

When the department, the county, or the municipality having jurisdiction of a public road determines that it is reasonably necessary and in the public interest to use an underpass or overpass instead of a grade crossing at a new or relocated railroad track or tracks or at a new or relocated public road, the procedure to be followed, the division of costs, and the maintenance responsibilities shall be the same as are provided in Code Sections 32-6-194 through 32-6-198. (Ga. L. 1927, p. 299, § 3; Code 1933, § 95-1903; Code 1933, § 95A-1015, enacted by Ga. L. 1973, p. 947, § 1.)

32-6-193. Authority of department, counties, and municipalities to eliminate grade crossings.

When it is reasonably necessary in the interest of public safety, the department, in respect to the state highway system, a county, in respect to its county road system, or a municipality, in respect to its municipal street system, may authorize and direct the elimination of a grade crossing by construction of an underpass or overpass or by physical removal of the grade crossing and barricading or removing the approaches thereto without construction of an underpass or overpass, provided that any grade crossing elimination shall be in accordance with this part and that no grade crossing on a county road system or municipal street system shall be eliminated by construction of an underpass or overpass upon order of the county or municipality until

and unless the department shall approve the plans and specifications of the proposed construction. No grade crossing on a public road shall be permanently closed except by elimination in accordance with this part. (Ga. L. 1927, p. 299, § 1; Code 1933, § 95-1902; Code 1933, § 95A-1008, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 2002, p. 1050, § 2.)

Law reviews. — For note on the 2002 amendment of this Code section, see 19 Ga. St. U.L. Rev. 213 (2002).

32-6-193.1. Elimination of grade crossings by physical removal; procedures.

(a) The department shall by rule or regulation prescribe uniform criteria for its own use and that of local governing authorities in assessing whether elimination of a grade crossing on a public road by physical removal of the grade crossing and barricading or removing the approaches thereto without construction of an underpass or overpass is reasonably necessary in the interest of public safety. For purposes of this Code section, “reasonably necessary in the interest of public safety” means that the enhancement of public safety resulting from such elimination of the grade crossing will outweigh any inconvenience to the reasonable passage of public traffic, specifically including without limitation emergency vehicle traffic, caused by such rerouting of traffic. Such criteria shall include consideration of each of the following factors:

(1) Number and timetable speeds of passenger trains operated through the crossing;

(2) Number and timetable speeds of freight trains operated through the crossing;

(3) Distance to alternate crossings;

(4) Accident history of the crossing for the immediately preceding five-year period;

(5) Type of warning device present at the crossing, if any;

(6) The alignments, horizontal and vertical, of the roadway and the railroad and the angle of the intersection of those alignments;

(7) The average daily traffic volume in proportion to the population of the municipality if the crossing is located within a municipality or the population of the county if the crossing is located within an unincorporated area of a county;

(8) The posted speed limit over the crossing;

(9) The effect of closing the crossing upon access by persons utilizing;

(A) Hospital or medical facilities and public health departments, specifically including without limitation utilization by medical personnel;

(B) Facilities of federal, state, or local government, specifically including without limitation court, postal, library, sanitation, and park facilities; and

(C) Commercial, industrial, and other areas of public commerce;

(10) Any use of the crossing by:

(A) Trucks carrying hazardous material;

(B) Vehicles carrying passengers for hire;

(C) School buses;

(D) Emergency vehicles; or

(E) Public or private utility vehicles, specifically including without limitation water, sewer, natural gas, and electric utility maintenance and repair vehicles; and

(11) Any other relevant factors as prescribed by the department.

(b)(1) Any railroad may file a written petition requesting an order to eliminate a grade crossing on a public road by physical removal of the grade crossing and barricading or removing the approaches thereto without construction of an underpass or overpass. Any such petition shall be filed by certified mail or statutory overnight delivery, return receipt requested, with the department in respect to the state highway system, a county governing authority in respect to its county road system, or a municipal governing authority in respect to its municipal street system.

(2) Any petition by a railroad under this subsection shall include without limitation information as to each of the factors set forth in paragraphs (1) through (5) of subsection (a) of this Code section.

(3) The department or the local governing authority, whichever is applicable, shall conduct a public hearing on the matter prior to deciding whether to grant or deny such a petition.

(4)(A) No railroad shall have a duty to file a petition for elimination of a grade crossing as authorized by this subsection.

(B) Neither the failure of a railroad to file such a petition nor any decision by the department or any local governing authority regarding such a petition shall give rise to a cause of action against the railroad, the department, or a local governing authority by a person for injuries or damages arising from the existence or use of such crossing.

(c)(1) If the department in respect to the state highway system, a county governing authority in respect to its county road system, or a municipal governing authority in respect to its municipal street system determines that elimination of a grade crossing in accordance with this Code section is reasonably necessary in the interest of public safety, the department or the local governing authority may issue an order to eliminate the crossing. Such order shall be in writing, and a copy shall be served upon the railroad. If a local governing authority issues such an order, it shall make a record of its findings and transmit a copy of the same along with the order to the department.

(2) If the department in respect to the state highway system, a county governing authority in respect to its county road system, or a municipal governing authority in respect to its municipal street system determines that elimination of a grade crossing in accordance with this Code section is not reasonably necessary in the interest of public safety, the department or the local governing authority may issue an order denying a petition to eliminate the crossing. Such order shall be in writing, and a copy shall be served upon the railroad. If a local governing authority denies a petition, it shall make a written record of its findings and transmit a copy of the same along with the order and petition to the department.

(3)(A) Any railroad aggrieved by an order of a local governing authority under this subsection may make a written request to the department for review of such order. Such request shall be accompanied by a \$500.00 filing fee. The department shall within 60 days after the filing of such request review the matter.

(B) Upon review of the order and findings of the local governing authority and any filings by the railroad, if the department determines that elimination of a grade crossing in accordance with this Code section is not reasonably necessary in the interest of public safety, the department shall order that the crossing shall remain open.

(C) Upon review of the order and findings of the local governing authority and any filings by the railroad, if the department determines that elimination of a grade crossing in accordance with this Code section is reasonably necessary in the interest of public safety, the department shall issue an order to eliminate the crossing.

(D) Any such order of the department shall be in writing, and a copy of the order shall be served upon the railroad and the local governing authority. As part of such order, the department shall assess all its costs of investigating and reviewing the matter

against the railroad if an order for the crossing to remain open is issued or against the county or municipality if an order to eliminate the crossing is issued, and the party so assessed shall be liable therefor to the department; provided, however, that any filing fee paid to the department by a railroad shall be applied to any such amount assessed against the railroad, and the balance of such filing fee, if any, shall be refunded to the railroad. The department shall keep detailed records of its costs of investigation and review for purposes of this subparagraph, and such records shall be subject to public inspection as provided by Article 4 of Chapter 18 of Title 50.

(d) If an order to close a grade crossing is issued, the railroad shall at its expense physically remove the crossing from the tracks and for two feet beyond the ends of the crossties on each side and extending four feet beyond the traveled way or flush with the edge of a paved shoulder, whichever is greater, of such crossing and erect a department approved barricade; and the department in respect to the state highway system, the county in respect to its county road system, or the municipality in respect to its municipal street system may at its expense remove approaches to the crossing. The provisions of Code Section 32-6-195 for division of costs of elimination of a grade crossing by construction of an underpass or overpass shall not apply to elimination of any grade crossing under this Code section. (Code 1981, § 32-6-193.1, enacted by Ga. L. 2002, p. 1050, § 4; Ga. L. 2004, p. 376, § 1.)

Administrative rules and regulations. — Criteria for elimination of highway-rail grade crossings, Official Compilation of the Rules and Regulations of the State of Georgia, State Department of Transportation, Chapter 672-16.

Law reviews. — For note on the 2002 enactment of this Code section, see 19 Ga. St. U.L. Rev. 213 (2002).

32-6-194. Procedure for grade crossing elimination.

(a) Whenever the department, a county, or a municipality shall decide to eliminate any grade crossing on its respective public road system by means of an underpass or overpass, prompt notice of such decision shall be given to the railroad or railroads involved; and within 30 days thereafter the representatives of the department, the county, or the municipality and of the railroads involved shall meet and, within 90 days, agree to a plan and specifications for the construction of a grade separation structure. Any such agreement between a county or municipality and a railroad shall be submitted to the department for its approval; and work leading to the elimination of the grade crossing pursuant to the agreement shall not commence until and unless the department approves the same. The department, county, or municipality, by agreement with the railroad or railroads involved, may apportion

the work to be done in the construction of such grade separation structure between the railroad or railroads and the department or the county or the municipality.

(b) If agreement is not reached within 90 days, the department, county, or municipality may proceed with construction of a grade separation structure or may by written order direct the railroad or railroads involved to proceed with the construction of a grade separation structure according to the plan and specifications accompanying such order, provided that no work shall be begun on any grade separation structure on a county or municipal public road system until and unless the department approves the plan and specifications of such structure. It shall be the duty of said railroad to begin work on any such grade separation structure within four months after receipt of an order to that effect and to complete that structure within a reasonable time, provided that the railroad shall not be required to do the actual physical work of providing approaches by fill to an overpass or the excavating beneath an underpass or the approaches thereto, although the cost of such work shall be considered as part of the costs of the grade crossing elimination, whether actually performed by the railroad, the department, the county, or the municipality; and such costs shall be apportioned as provided in Code Section 32-6-195. If the railroad does not begin work within four months after receipt of an order to that effect, the department, county, or municipality may proceed with the construction of the proposed grade separation structure. If the railroad begins work within four months after receipt of an order to that effect but thereafter fails to complete such work within a reasonable time, the department, county, or municipality may proceed to complete the unfinished work.

(c) In any case where the construction of all or part of a grade separation structure is done by the department, a county, or a municipality, a statement of any railroad's share of the costs of the project, as determined pursuant to Code Section 32-6-195, plus 8 percent per annum interest on each expenditure of the cost of such project shall be submitted to the railroad upon completion of the project. In the event that the railroad does not make payment or arrange to make payment to the department, county, or municipality within 60 days of receipt of the statement, the department shall certify the amount for collection to the Attorney General; or, in the case of a project on a county or municipal public road system, the county or municipality shall take appropriate action for the collection of the amount thereof. In the event said share is not paid within the time specified in this Code section, said share or any unpaid portion thereof shall bear interest at a rate of 8 percent per annum from the date due.

(d) The department, a county, or a municipality shall not construct or require any railroad to construct an underpass of a plan, specification,

or design, the strength of which, in the judgment of the railroad, shall not be sufficient to meet the requirements of its traffic thereover. In a plan providing for an overpass or underpass, the department, a county, or a municipality shall not interfere with or change the grade or alignment of the track or tracks of any railroad or relocate the line of the railroad without its consent. (Ga. L. 1927, p. 299, §§ 3, 4, 10; Code 1933, §§ 95-1903, 95-1906, 95-1910; Code 1933, § 95A-1009, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1985, p. 149, § 32.)

32-6-195. Division of costs of grade crossing elimination projects.

(a) The costs of the grade crossing elimination project in which the railroad or railroads shall be required to share shall include the costs of surveys, preparation of plans and specifications, the securing of estimates or bids, if any, and the total cost of construction of the grade separation structures involved, including the establishment of drainage and any excavation and other expenses involved in constructing public roadways or railroad lines under any grade separation structure. However, the railroad or railroads shall not be required to participate in the cost of any construction outside the limits of grade or alignment change required for the public road to go over or under the track or tracks of the railroad or railroads nor in any costs apportionable to purposes other than the elimination of the grade crossing. Where additional lanes are added to the public road, the railroad's share of the cost, if any, shall be based on the cost of a grade elimination project having the same number of lanes as the public road prior to the construction of said grade elimination project.

(b)(1) The costs of the project shall be shared by the parties involved in such manner as may be agreed upon by the railroad or railroads involved and the department, county, or municipality. Such agreement shall have precedence over any existing agreement on the same subject matter and shall give consideration to the following factors: the benefits accruing to the railroad or railroads and to the public, respectively, from the elimination of the grade crossing; the circumstances under which the grade crossing was created; any preexisting rights of the railroad or railroads as result of being first in position; comparison of the degree of danger caused by the railroad or railroads and by quantity and character of traffic upon the public road; and what is generally, under comparable circumstances, considered to be reasonable, provided that in no event shall the railroad be required to pay more than 50 percent of the cost of a grade crossing elimination project on a county road system or on a municipal street system. In the event agreement cannot be reached, the determination of what portion of the costs shall be the fair and reasonable share of the

railroads involved shall be made by the department after reasonable opportunity for hearing to all parties concerned. In making such determination, the department shall give due regard to the considerations heretofore enumerated. The agreed value or, in the absence of agreement, the independently appraised value of the fee or any lesser interest in the right of way of the railroad used for such project shall be determined and such value credited to the railroad as a part of its participation in the cost of the project, provided that nothing in this Code section shall prevent the department, county, or municipality from exercising its rights of eminent domain as now or hereafter provided by law.

(2) As used in this subsection, the term "costs of the project" means:

(A) In the case of a project for part of a county road or municipal street system, the total costs of such project less the sum of any funds for such project furnished by the federal and state governments; and

(B) In the case of a project for part of the state highway system, the total costs of such project less any funds furnished by the federal government. (Ga. L. 1927, p. 299, § 6; Code 1933, § 95-1905; Code 1933, § 95A-1010, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1996, p. 6, § 32.)

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, § 95-1912, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section.

Railroad may be required to contribute 50 percent of cost of eliminating grade crossing when provisions of section are followed. 1945-47 Op. Att'y Gen.

p. 616 (decided under former Code 1933, § 95-1905).

Railroads may agree with department to pay less than half of costs. — Railroad and the State Highway Department (now Department of Transportation) may agree for joint participation in cost of elimination of grade crossing on a basis of less than 50 percent to railroad. 1945-47 Op. Att'y Gen. p. 616.

32-6-196. Temporary use of railroad rights of way during construction or maintenance of grade separation structures or grade crossing or protective devices.

All railroads shall permit the temporary use, free of cost, of so much of their rights of way as may be necessary during the construction or maintenance of any grade separation structures or any grade crossing or protective devices, provided that, whenever any employees or contractors of the department or of any county or municipality shall enter the right of way of any railroad, they shall be subject to any reasonable

rules and regulations such railroad may make for the protection of its traffic, employees, passengers, and operations. (Ga. L. 1927, p. 299, §§ 4, 13; Code 1933, §§ 95-1906, 95-1913; Code 1933, § 95A-1010, enacted by Ga. L. 1973, p. 947, § 1.)

32-6-197. Responsibility for maintenance of overpasses and underpasses.

(a) It shall be the duty of the department to maintain all overpasses involving railroads on the state highway system.

(b) It shall be the duty of the county or the municipality to maintain at its own expense the drainage, surface, pavement, approaches, and guardrails of all overpasses involving railroads on its respective public road system. It shall be the duty of the railroad involved to maintain at its own expense any floors constructed of wood and the foundations, piers, abutments, and superstructures of all overpasses on the county or municipal public road system.

(c) It shall be the duty of the railroad or railroads involved to maintain all underpasses except the lighting, drainage, and pavement of the public roads thereunder, which shall be maintained by the department, counties, or municipalities on their respective public road systems.

(d) All maintenance required by this Code section of the department shall be at the expense of the department, and all maintenance required by this Code section of the railroad shall be at the expense of such railroad, provided that the duty of maintenance imposed upon the department by this Code section shall not operate to subject the department to liability for damages resulting from any failure to maintain properly.

(e) Except as provided in subsection (b) of Code Section 32-6-195, nothing in this article shall be construed as voiding agreements executed prior to July 1, 1973. (Ga. L. 1927, p. 299, § 9; Code 1933, § 95-1909; Ga. L. 1950, p. 419, § 1; Code 1933, § 95A-1011, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1985, p. 149, § 32.)

JUDICIAL DECISIONS

Traffic control devices. — Nothing in O.C.G.A. § 32-6-197 places any duty on a railroad regarding the installation or maintenance of traffic control devices in the area around a railroad overpass. *City of Fairburn v. Cook*, 188 Ga. App. 58, 372 S.E.2d 245, cert. denied, 188 Ga. App. 911, 372 S.E.2d 245 (1988).

Exclusive duty of county to main-

tain road and warning devices. — Statutory duty to maintain a public road and warning devices thereon leading to the former site of a timber bridge spanning a railroad track was exclusively that of the county, both at the time the bridge was removed and at the time of the accident giving rise to a negligence action against the railroad. *Kitchen v. CSX*

Transp., Inc., 265 Ga. 206, 453 S.E.2d 712 (1995).

32-6-198. Agreements as to grade crossing elimination.

Nothing in this part shall be construed to prevent the department, a county, or a municipality from reaching special agreements with a railroad company providing for grade crossing elimination by means of relocation of either the railroad or public road involved or by other means not expressly provided for in this part and from arranging joint participation in the cost of such elimination in accordance with the procedures in Code Section 32-6-195. (Ga. L. 1927, p. 299, § 12; Code 1933, § 95-1912; Code 1933, § 95A-1012, enacted by Ga. L. 1973, p. 947, § 1.)

OPINIONS OF THE ATTORNEY GENERAL

<p>Railroad may enter agreement to pay less than half of costs. — Railroad and the State Highway Department (now Department of Transportation) may agree</p>	<p>for joint participation in the cost of elimination of a grade crossing on the basis of less than 50 percent to the railroad. 1945-47 Op. Att’y Gen. p. 616.</p>
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32-6-199. Improvement of existing underpass or overpass.

Whenever an existing underpass or overpass involving railroads is unsafe or inadequate to serve reasonably the traffic for which it was constructed, the department, the county, or the municipality may proceed to bring about improvement of said existing structure. In such event the procedure, division of the costs of construction, and maintenance responsibilities in regard to such improvement shall be as provided in Code Sections 32-6-194 through 32-6-198. (Ga. L. 1927, p. 299, § 8; Code 1933, § 95-1908; Code 1933, § 95A-1013, enacted by Ga. L. 1973, p. 947, § 1.)

<p>Cross references. — Restriction on authority of Public Service Commission to require railroad to reconstruct underpass,</p>	<p>trestle, or grade crossing to accommodate motor vehicle exceeding 12 feet, six inches in height, § 46-8-133.</p>
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JUDICIAL DECISIONS

<p>Specific defects within county’s responsibility. — Trial court did not err in granting summary judgment to the builder of a one-lane railroad overpass since the builder indisputably established</p>	<p>that the specific defects alleged by the injured driver’s expert were within the county’s statutory responsibility. <i>Crouch v. CSX Transp., Inc.</i>, 203 Ga. App. 618, 417 S.E.2d 216 (1992).</p>
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OPINIONS OF THE ATTORNEY GENERAL

When department may expend funds for new overpasses. — Department of Transportation may expend the department's funds for reconstruction of overpasses which the department has determined to be obsolete, inadequate, and unsafe to accommodate current highway traffic, or which have become so costly to maintain as to warrant replacement or

reconstruction. 1971 Op. Att'y Gen. No. 71-125.

Department expenditure of funds to construct new overpasses. — Department can expend the department's funds to construct new overpasses on same or new locations for purpose of replacing existing inadequate overpasses. 1971 Op. Att'y Gen. No. 71-125.

32-6-200. Installation of protective devices at grade crossings.

(a) Whenever, in the judgment of the department in respect to the state highway system, a county in respect to its county road system, or a municipality in respect to its municipal street system, such protection is reasonably necessary for the safety of the traveling public, the department or the county or the municipality may order the protection of a grade crossing by the installation of protective devices. Prompt notice of such order shall be given to the railroad or railroads involved; and within 30 days thereafter the representatives of the department, the county, or the municipality and of the railroad or railroads involved shall meet and, within 90 days, agree to a plan and specifications for the acquisition and installation of protective devices. If an agreement is not reached within 90 days, the department, the county, or the municipality may order the railroad company or companies involved to proceed with the acquisition and installation of protective devices, as indicated in the plan and specifications accompanying its order. However, no work leading to the installation of protective devices at a grade crossing on a county or municipal public road system shall commence until and unless the plan and specifications for such device are approved by the department. It shall be the duty of the railroad or railroads to proceed with acquisition and installation of protective devices within 60 days after receipt of an order to that effect and to complete such acquisition and installation within six months thereafter.

(b)(1) The expense of acquiring and installing a protective device shall be shared between:

(A) The department and the railroad involved, in such portions as may be determined by the negotiation procedures set forth in subsection (b) of Code Section 32-6-195, including consideration of all pertinent factors included in said subsection to be weighed in determining a reasonable division of costs and including the right of the department after a hearing to make the determination of the fair and reasonable costs to be shared by the railroad in the event that agreement as to such division of costs cannot be reached; and

(B) The county or municipality and the railroad involved, equally.

However, if such device shall be required as a result of a new road being constructed over an existing railroad, 100 percent of such cost shall be the responsibility of the department, county, or municipality involved; and, if such device shall be required as the result of a new railroad, 100 percent of such cost shall be the responsibility of the railroad.

(2) As used in this subsection, the term “expense of acquiring and installing a protective device” means:

(A) In the case of a protective device for part of a county road or municipal street system, the total cost of such project less the sum of any funds for such project furnished by the federal and state governments; and

(B) In the case of a protective device for part of the state highway system, the total cost of such project less any funds furnished by the federal government.

(3) The railroad or railroads shall maintain all protective devices at its or their own expense; and nothing in this subsection shall be construed to impose any public liability on the department or any county or municipality in any manner regarding such devices. However, nothing in this subsection shall prevent an agreement between the railroad or railroads and an industry or industries, which agreement assesses the cost of construction or maintenance of such devices against the industry or industries to be served by such track.

(c) In any case where the protective devices are acquired and installed by agreement or by order of the department, a county, or a municipality, a statement of such public agency's share of the costs of the project, as determined by such agreement or pursuant to subsection (b) of this Code section, shall be submitted by the railroad involved to the public agency involved upon completion of the project and upon nonpayment may be collected as provided by law.

(d)(1) As used in this subsection, the term “active warning devices” means automated control gates, lights, and warning bells, used singly or in any combination.

(2) Each local school district in this state shall survey its established school bus routes annually and submit to the Department of Transportation a list identifying each rail crossing that does not have active warning devices on an established bus route. Each local school district shall be required to submit this information to the department each year by no later than September 1.

(3) Each local school district shall exercise best efforts to minimize the number of established school bus routes that cross rail crossings that do not have active warning devices.

(4) The department shall use the information about school bus routes as an important factor in selecting rail crossings to upgrade with active warning devices. (Ga. L. 1927, p. 299, §§ 3, 7; Code 1933, §§ 95-1903, 95-1907; Code 1933, § 95-1907.1, enacted by Ga. L. 1967, p. 458, § 1; Code 1933, § 95A-1014, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 2008, p. 497, § 2/HB 426.)

Cross references. — Further provisions regarding installation of protective devices at grade crossings, § 46-8-194 et seq.

Editor's notes. — Ga. L. 2008, p. 497, § 1/HB 426, not codified by the General

Assembly, provides that: "The General Assembly is interested in increasing safety at railroad crossings, especially crossings used by school buses, and therefore finds that certain legislation may enhance such safety."

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under Ga. L. 1967, p. 433, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section.

Common law action against railroad precluded. — Georgia Code of Public Transportation, O.C.G.A. § 32-1-1 et seq., precluded a common law cause of action against a railroad for the failure to install adequate protective devices at a grade crossing on a public road since the railroad had not been requested to do so by the appropriate governmental entity. *Southern Ry. v. Georgia Kraft Co.*, 188 Ga. App. 623, 373 S.E.2d 774 (1988).

Because the Georgia Code of Public Transportation, O.C.G.A. § 32-1-1 et seq., abrogated any common law duty on the part of defendant railroad to install adequate signal equipment at a railroad crossing where the driver's car was struck by a train, the common law negligence claim asserted by plaintiffs, the driver's survivors, was dismissed for failure to state a claim; under O.C.G.A. § 32-6-51, the railroad company would have acted in violation of Georgia law if the company erected traffic signals on the public road unless the company was required or authorized to do so by § 32-6-51(d), O.C.G.A. § 32-6-50, or some "other law," and

O.C.G.A. § 32-6-200 delegated responsibility for the installation of protective devices on public roads to the appropriate governmental entity. *Bentley v. CSX Transp., Inc.*, 437 F. Supp. 2d 1327 (N.D. Ga. 2006).

Applicability to private crossings. — O.C.G.A. § 32-6-200 relates to the installation of protective devices at grade crossings on the state highway system, the county road systems, and the municipal street systems, but, by the statute's terms, not to the installation of protective devices at private crossings. *Central of Ga. R.R. v. Markert*, 200 Ga. App. 851, 410 S.E.2d 437 (1991), cert. denied, 200 Ga. App. 895, 410 S.E.2d 437 (1991), but see *CSX Transp., Inc. v. Trism Specialized Carriers, Inc.*, 9 F. Supp. 2d 1374 (N.D. Ga. 1998), aff'd, 182 F.3d 788 (11th Cir. 1999).

Absence of private crossings from the ambit of O.C.G.A. § 32-6-200 merely shows that there is no statutory duty as to the installation of protective devices at such crossings, and that railroads may not be held negligent per se as to the installation of protective devices at such crossings. It does not establish that there is no common law duty as to the installation of protective devices at such crossings so that railroads may not be held liable for common law negligence with regard to the installation of protective devices at such

crossings. *Central of Ga. R.R. v. Markert*, 200 Ga. App. 851, 410 S.E.2d 437 (1991), cert. denied, 200 Ga. App. 895, 410 S.E.2d 437 (1991), but see *CSX Transp., Inc. v. Trism Specialized Carriers, Inc.*, 9 F. Supp. 2d 1374 (N.D. Ga. 1998), aff'd, 182 F.3d 788 (11th Cir. 1999).

Municipal traffic protection requirements. — Section provides sole and exclusive method whereby a municipality may require traffic protection at a grade crossing. *Georgia S. & Fla. Ry. v. Odom*, 242 Ga. 169, 249 S.E.2d 545 (1978).

Constitutionality of municipal ordinance. — Municipal ordinance requiring flag person to be placed at grade crossing violates the Georgia Constitution. *Georgia S. & Fla. Ry. v. Odom*, 242 Ga. 169, 249 S.E.2d 545 (1978).

Unsafe conditions. — Authority of a railroad to initiate certain curative action for a potentially unsafe condition was affirmatively redelegated in O.C.G.A. § 32-6-200, and, thus, the common-law duties the railroad owed to motorists regarding unsafe conditions was not contradicted or placed exclusively on governmental entities. *Fortner v. Town of Register*, 278 Ga. 625, 604 S.E.2d 175 (2004).

City has no duty of care with regard to automatic signals at railroad crossings except, in the city's judgment, to require installation of the signals. *Hancock v. City of Dalton*, 131 Ga. App. 178, 205 S.E.2d 470 (1974) (decided under Ga. L. 1967, p. 433).

O.C.G.A. § 32-6-200 creates no affirmative duty on behalf of a municipality to install protective devices, and when the city had provided a cross buck and stop sign in the exercise of the city's discretionary judgment, the city was not liable for the city's failure to install additional

signs. *Biggers ex rel. Key v. Southern Ry.*, 820 F. Supp. 1409 (N.D. Ga. 1993), but see *CSX Transp., Inc. v. Trism Specialized Carriers, Inc.*, 9 F. Supp. 2d 1374 (N.D. Ga. 1998), aff'd, 182 F.3d 788 (11th Cir. 1999).

City's failure to enforce ordinance does not constitute nuisance. — Failure of city to enforce the city's ordinance requiring signals at all railroad crossings or terms of contract to pay for installation of signals does not involve maintenance of a nuisance. *Hancock v. City of Dalton*, 131 Ga. App. 178, 205 S.E.2d 470 (1974) (decided under Ga. L. 1967, p. 433).

Condition of zoning ordinance upheld. — Condition of a zoning ordinance requiring an auction company to pay for traffic signals at a railroad crossing on a road leading to the company's property did not violate O.C.G.A. § 32-6-200; the statute does not prevent a county from requiring, as a condition of zoning, that a landowner reimburse the county for the county's share of the costs associated with the acquisition and installation of protective devices. *Combs v. Atlanta Auto Auction, Inc.*, 287 Ga. App. 9, 650 S.E.2d 709 (2007), cert. denied, 2008 Ga. LEXIS 156 (Ga. 2008).

Jury instructions. — In a wrongful death action, the district court did not err by instructing the jury concerning the railroad's duty to maintain traffic control devices because taking all of the instructions together, the jury was properly informed that the railroad could not be held liable for the decision about which warning device to put in place or continue in place, but the railroad could be held liable for any failure to repair an existing warning light. *Wright v. CSX Transp., Inc.*, 375 F.3d 1252 (11th Cir. 2004).

Cited in *Murray v. Ga. DOT*, 284 Ga. App. 263, 644 S.E.2d 290 (2007).

RESEARCH REFERENCES

ALR. — Customary or statutory signal from train as measure of railroad's duty as

to warning at highway crossing, 5 ALR2d 112.

32-6-201. Regulation of traffic when necessary to perform maintenance.

(a) Whenever it is necessary for the department, a county, or a municipality to perform any maintenance in regard to a grade separation structure, protective devices, or grade crossing, responsibility for which is imposed on such department, county, or municipality by this part, and the regulation and control of railroad traffic is necessary for the performance of such maintenance, it shall be the duty of the railroad or railroads involved, after receiving notice, to assist the department, county, or municipality by providing reasonable regulation and control of railroad traffic, having due regard to the needs of such traffic and to the public welfare.

(b) Whenever it is necessary for a railroad to perform any maintenance in regard to a grade separation structure, protective devices, or grade crossing, responsibility for which is imposed on such railroad by this part, and the regulation and control of pedestrian and vehicular traffic is necessary for the performance of such maintenance, it shall be the duty of the department, the county, or the municipality, after having received notice, to assist the railroad by providing reasonable regulation and control of pedestrian and vehicular traffic, having due regard to the needs of such traffic and to the public welfare. (Code 1933, § 95A-1016, enacted by Ga. L. 1973, p. 947, § 1.)

32-6-202. Procedure to obtain maintenance of grade separation structures, protective devices, and grade crossings.

(a)(1) Whenever any maintenance of a grade separation structure, protective devices, or a grade crossing is necessary for the safe and reasonable passage of public traffic and such maintenance is the responsibility of a railroad under this part, the department in respect to the state highway system, the governing authority of the county in respect to its county road system, or the governing authority of the municipality in respect to its municipal street system may give written notice to the railroad of the necessity of such maintenance and order the railroad to comply with the maintenance requirements of this part. Such order shall be in writing and, as applicable, shall include the United States Department of Transportation inventory number and railroad milepost number, as well as the highway, street, or roadway name and number as identified on a general highway map prepared by the department. Such order shall be served upon the railroad by certified mail or statutory overnight delivery, return receipt requested.

(2)(A) If any railroad fails to comply with such an order of a county or municipality within 30 days after receipt of such notice and

order, the county or municipal governing authority may file with the department a written request for review of the matter. Any such request for review shall be accompanied by a filing fee of \$500.00 per grade crossing and shall include a copy of the order of the county or municipality. A copy of such request for review shall be served on the railroad by the county or municipality by certified mail or statutory overnight delivery, return receipt requested. The department shall within 30 days after the filing of such request investigate the matter, including undertaking consideration of any statement of position filed by the railroad within ten days after the filing of the request for review, and issue an order either requiring the railroad to take such action as is necessary for purposes of compliance with the maintenance requirements of this part or nullifying the order of the local governing authority. As part of such order, the department shall assess all its costs of investigating and reviewing the matter against the railroad if a compliance order is issued or against the county or municipality if the order of the local governing authority is nullified, and the party so assessed shall be liable therefor to the department; provided, however, that any filing fee paid to the department by a county or municipality shall be applied to any such amount assessed against the county or municipality, and the balance of such filing fee, if any, shall be refunded to the county or municipality. Copies of any such order of the department shall be served upon the railroad and the local governing authority by certified mail or statutory overnight delivery, return receipt requested. The department shall keep detailed records of its costs of investigation and review for purposes of this subparagraph, and such records shall be subject to public inspection as provided by Article 4 of Chapter 18 of Title 50.

(B) If any railroad fails to comply with any order of the department under paragraph (1) of this subsection or subparagraph (A) of this paragraph within 30 days after receipt of such order, then after notice and opportunity for a hearing, the railroad shall be subject to a civil penalty in the amount of \$500.00 per day from 30 days after the date of receipt of the order of the department until the railroad has complied with the order of the department; provided, however, that the department may grant an extension of time for compliance without penalty upon a showing that the railroad's failure to timely comply was due to force majeure. The provisions of this subparagraph are in addition to the provisions of Code Sections 32-1-10 and 32-6-1, if applicable. Any fine under this subparagraph shall be tolled for the period from the filing of a petition for a judicial review under Code Section 32-6-203 until the rendering of a final decision.

(3) Each railroad whose track or tracks cross a public road in this state shall identify in writing to the department, by job title and with

contact information, the appropriate office responsible for the maintenance of grade separation structures, protective devices, and grade crossings and upon which the notices and orders provided for in this subsection shall be served. Such information shall be kept current by the railroad and shall be made publicly available and accessible by the department.

(4) Nothing in this subsection shall be construed so as to prevent the department, a county, or a municipality from performing any emergency maintenance which is necessary for the safe and reasonable passage of public traffic, provided reasonable notice is given to the railroad involved, and from collecting the expenses of such maintenance.

(b) Whenever any maintenance of a grade separation structure, protective devices, or a grade crossing is reasonably necessary for the safe passage of railroad traffic and such maintenance is the responsibility of the department, a county, or a municipality, the railroad concerned may give written notice to the department, county, or municipality of the necessity of such maintenance. If the department, county, or municipality does not proceed with the performance of such maintenance within 30 days after receipt of such notice, the railroad may proceed to enforce performance of such maintenance as provided in Code Section 32-6-175. Nothing in this subsection shall be construed so as to prevent a railroad from performing any emergency maintenance which is necessary for the safe passage of railroad traffic, provided reasonable notice is given to the department, county, or municipality involved, and from collecting the expenses of such maintenance. (Code 1933, § 95A-1017, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1982, p. 3, § 32; Ga. L. 2002, p. 1050, § 5.)

Cross references. — Restriction on authority of Public Service Commission to require railroad to reconstruct underpass, trestle, or grade crossing to accommodate motor vehicle exceeding 12 feet, six inches in height, § 46-8-133. Further provisions

regarding installation of protective devices at grade crossings, § 46-8-194 et seq.

Law reviews. — For note on the 2002 amendment of this Code section, see 19 Ga. St. U.L. Rev. 213 (2002).

32-6-203. Judicial review.

Any judgment, decision, or order of the department upon any question involving the advisability or necessity of eliminating any grade crossing, of installing any protective device, of improving any grade crossing structure, or involving any other question concerning the public roads arising under this part shall be subject to judicial review in such manner as is provided by law for judicial review of contested cases under Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." Pending the final determination of any judicial proceedings so instituted, the department, without prejudice to it or the railroad

involved and at its own risk, may proceed with the work involved in such litigation, subject to final judgment of the court as to all questions involved in such litigation. (Ga. L. 1927, p. 299, § 11; Code 1933, § 95-1911; Code 1933, § 95A-1018, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 2002, p. 1050, § 6.)

Law reviews. — For note on the 2002 amendment of this Code section, see 19 Ga. St. U.L. Rev. 213 (2002).

ARTICLE 7

TRANSPORTATION OF HAZARDOUS MATERIALS

32-6-220 through 32-6-225.

Repealed by Ga. L. 1985, p. 469, § 1, effective July 1, 1985, and by Ga. L. 1985, p. 1499, § 1, effective July 1, 1985.

Editor's notes. — The provisions of this article were transferred to new Chapter 11 of Title 46 by Ga. L. 1985, p. 469 and by Ga. L. 1985, p. 1499.

ARTICLE 8

CONTROL OF JUNKYARDS

Cross references. — Waste management generally, T. 12, C. 8. Junk dealers, T. 43, C. 22. Scrap metal processors, T. 43, C. 43.

Administrative rules and regula-

tions. — Rules and regulations governing the control of junkyards, Official Compilation of the Rules and Regulations of the State of Georgia, State Department of Transportation, Chapter 672-8.

32-6-240. Definitions.

As used in this article, the term:

- (1) "Automobile graveyard" means any establishment which is maintained or used for storing, buying, or selling wrecked, scrapped, ruined, or dismantled motor vehicles or motor vehicle parts.
- (2) "Junk" means old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber, debris, or waste; junked, dismantled, or wrecked automobiles, or parts thereof; or iron, steel, and other old scrap ferrous or nonferrous material.
- (3) "Junkyard" means any establishment which is maintained or used for storing, buying, or selling junk or for an automobile graveyard; and the term shall include garbage dumps, sanitary fills, and scrap processor establishments.
- (4) "Primary system" or "primary highway" means the federal-aid primary system in existence on June 1, 1991, and any highway which

is not on such system, but which is on the National Highway System, as officially designated or as may hereafter be so designated by the department and approved by the United States Secretary of Transportation pursuant to the provisions of Title 23, Section 103, United States Code.

(5) "Scrap processor" means any person, firm, or corporation engaged only in the business of buying scrap iron and metals, including but not limited to old automobiles, for the specific purpose of processing into raw material for remelting purposes only, and whose principal product is ferrous and nonferrous scrap for shipment to steel mills, foundries, smelters, and refineries, and who maintains an established place of business in this state and has facilities and machinery designed for such processing. (Ga. L. 1967, p. 433, § 3; Code 1933, § 95A-905, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 2005, p. 601, § 5/SB 160.)

Law reviews. — For article, "Recommendations Regarding Control of Outdoor Advertising Along the Interstate Highway System in Georgia," see 14 Mercer L. Rev. 308 (1963).

32-6-241. Restrictions on location of junkyards in relation to location of rights of way of interstate or federal-aid primary highways.

The department is responsible for the control of junkyards only on those primary highways that are state roads. For all primary highways it shall be unlawful for any person to establish, operate, or maintain any junkyard, any portion of which is within 1,000 feet of the nearest edge of the right of way of any interstate or federal-aid primary highway, except:

(1) Those which are screened by natural objects, plantings, fences, or other appropriate means or which are otherwise removed from sight so as not to be visible from the main traveled way of such highway systems;

(2) Those located within areas which are zoned for industrial use under authority of law;

(3) Those located within unzoned industrial areas, which areas shall be determined from actual land uses and defined by regulations promulgated by the commissioner; and

(4) Those which are not visible from the main traveled way of the systems. (Ga. L. 1967, p. 433, § 4; Code 1933, § 95A-906, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 2005, p. 601, § 6/SB 160.)

Law reviews. — For article, “Recommendations Regarding Control of Outdoor Advertising Along the Interstate Highway

System in Georgia,” see 14 Mercer L. Rev. 308 (1963).

JUDICIAL DECISIONS

Section has effect of zoning and authorizes actions for violations. — Provisions declaring that junkyards established in contravention of law are subject to being removed and destroyed has effect of zoning such areas adjacent to

designated highways, and confers upon the Highway Department (now Department of Transportation) sufficient authority to bring an action. *Burnham v. State Hwy. Dep’t*, 224 Ga. 543, 163 S.E.2d 698 (1968).

RESEARCH REFERENCES

ALR. — Validity, construction, and application of zoning ordinance relating to

operation of junkyard or scrap metal processing plant, 50 ALR3d 837.

32-6-242. Screening junkyards in existence on April 6, 1967.

Any junkyard lawfully in existence on April 6, 1967, which is within 1,000 feet of the nearest edge of the right of way and visible from the main traveled way of any public road on the interstate or primary system, shall, whenever feasible, be screened by the department if such road is on the state highway system, otherwise by the county or municipal government having jurisdiction, so as not to be visible from such public road. Such junkyards may be screened at locations either on the right of way of such public road or on property acquired by the department for that purpose outside such right of way. Whenever the commissioner determines that it is in the best interest of the state, the department may acquire, pursuant to any of the procedures for property acquisition set forth in Article 1 of Chapter 3 of this title, such property or interests therein outside existing public road rights of way as may be necessary to provide adequate screening of such junkyards. (Ga. L. 1967, p. 433, § 5; Code 1933, § 95A-907, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 2005, p. 601, § 7/SB 160.)

Law reviews. — For article, “Recommendations Regarding Control of Outdoor Advertising Along the Interstate Highway

System in Georgia,” see 14 Mercer L. Rev. 308 (1963).

32-6-243. Promulgation by department of regulations governing the screening and fencing of junkyards.

For any interstate or primary highway on the state highway system, the department may promulgate uniform and reasonable regulations governing the screening or fencing of junkyards, including the materials used in such screening or fencing and the location, construction, and

maintenance thereof. (Ga. L. 1967, p. 433, § 7; Code 1933, § 95A-908, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 2005, p. 601, § 8/SB 160.)

Law reviews. — For article, "Recommendations Regarding Control of Outdoor Advertising Along the Interstate Highway

System in Georgia," see 14 Mercer L. Rev. 308 (1963).

RESEARCH REFERENCES

C.J.S. — 61A C.J.S., Motor Vehicles, §§ 1556, 1557, 1683.

ALR. — Regulation of junk dealers, 45 ALR2d 1391.

32-6-244. Authority of commissioner or local officials to acquire land and remove junkyards.

(a) For state roads on the primary system, when the commissioner or, with regard to nonstate roads on the primary system, the principal elected officials of the county or municipality having jurisdiction determines that the topography of the land adjoining such a road will not permit adequate screening of any junkyard lawfully in existence on April 6, 1967, or that such screening would not be economically feasible, the department or the local officials shall have the authority to acquire, pursuant to any of the procedures for property acquisition authorized in Article 1 of Chapter 3 of this title, such interests in lands as may be necessary to secure the relocation, removal, or disposal of such junkyard. The commissioner or the local officials shall determine whether it would be more feasible to relocate, remove, or dispose of the junkyards which cannot be screened, and such determination shall be final and conclusive.

(b) All junkyards lawfully in existence on April 6, 1967, which do not conform to the requirements of Code Section 32-6-241 and which, in the determination of the commissioner or the principal elected officials of the county or municipality having jurisdiction, cannot be made to conform by screening, shall be required to be removed under this Code section as soon as funds are available for that purpose, provided that the department or the county or municipality having jurisdiction shall not be required to expend any funds for screening or removal under this article unless and until federal-aid matching funds are made available for this purpose. (Ga. L. 1967, p. 433, §§ 8, 10, 14; Code 1933, § 95A-909, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 2005, p. 601, § 9/SB 160.)

Law reviews. — For article, "Recommendations Regarding Control of Outdoor Advertising Along the Interstate Highway

System in Georgia," see 14 Mercer L. Rev. 308 (1963).

32-6-245. Agreements with United States Secretary of Transportation.

The Georgia Department of Transportation is authorized to enter into agreements with the United States Secretary of Transportation, as provided by Title 23 of the United States Code, relating to the control of junkyards in areas adjacent to the interstate system and state routes on the primary systems; and the department may take action in the name of the state to comply with the terms of such agreements. (Ga. L. 1967, p. 433, § 13; Code 1933, § 95A-911, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 2005, p. 601, § 10/SB 160.)

U.S. Code. — Provision in Title 23 of the United States Code, relating to the control of junkyards in areas adjacent to interstate and federal-aid primary systems, referred to in this Code section, are found in 23 U.S.C. § 136.

Law reviews. — For article, "Recommendations Regarding Control of Outdoor Advertising Along the Interstate Highway System in Georgia," see 14 Mercer L. Rev. 308 (1963).

32-6-246. Abatement of nuisances.

Any junkyard which comes into existence after April 6, 1967, the establishment, operation, or maintenance of which is made unlawful by Code Section 32-6-241, is declared to be a public and private nuisance and may be forthwith removed, obliterated, or abated at the order of the commissioner. The department may then submit by registered or certified mail or statutory overnight delivery a statement of the expenses of such removal, obliteration, or abatement to the person owning or operating such junkyard; and, if payment is not made to the department within 60 days of receipt thereof, the department shall certify the amount for collection to the Attorney General. (Ga. L. 1967, p. 433, § 11; Code 1933, § 95A-910, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 2000, p. 1589, § 3.)

Editor's notes. — Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provided that the 2000 amendment was applicable to notices delivered on or after July 1, 2000.

Law reviews. — For article, "Recommendations Regarding Control of Outdoor Advertising Along the Interstate Highway System in Georgia," see 14 Mercer L. Rev. 308 (1963).

RESEARCH REFERENCES

Am. Jur. 2d. — 58 Am. Jur. 2d, Occupations, Trades, and Professions, § 78.

C.J.S. — 66 C.J.S., Nuisances, §§ 42 et seq., 50 et seq., 62.

32-6-247. Penalty.

(a) Any person who violates any provision of this article or any lawful regulation promulgated pursuant to this article shall be guilty of a

misdemeanor. Each day's presence of the offending junkyard shall be a separate offense.

(b) State and local law enforcement officers shall assist department employees in enforcing this article or any lawful regulation promulgated pursuant thereto. (Ga. L. 1967, p. 433, § 15; Code 1933, § 95A-912, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1991, p. 94, § 32.)

Law reviews. — For article, "Recommendations Regarding Control of Outdoor Advertising Along the Interstate Highway System in Georgia," see 14 Mercer L. Rev. 308 (1963).

32-6-248. Construction of article.

Nothing in this article shall be construed as to abrogate or affect the provisions of any lawful ordinance, regulation, resolution, or other law which are more restrictive than the provisions of this article. (Ga. L. 1967, p. 433, § 12; Code 1933, § 95A-912, enacted by Ga. L. 1973, p. 947, § 1.)

Law reviews. — For article, "Recommendations Regarding Control of Outdoor Advertising Along the Interstate Highway System in Georgia," see 14 Mercer L. Rev. 308 (1963).

CHAPTER 7

ABANDONMENT, DISPOSAL, OR LEASING OF
PROPERTY NOT NEEDED FOR PUBLIC
ROAD PURPOSES

Sec.		Sec.	
32-7-1.	Authority of department, counties, and municipalities to substitute for, relocate, or abandon public roads.		pose of property no longer needed for public road purposes.
32-7-2.	Procedure for abandonment.	32-7-4.	Procedure for disposition of property.
32-7-3.	Authority of department, counties, and municipalities to dis-	32-7-5.	Leasing property not needed for public road purposes.

Cross references. — Condemnation of constructing electric power plants, public and private roads for purposes of § 22-3-20 et seq.

32-7-1. Authority of department, counties, and municipalities to substitute for, relocate, or abandon public roads.

Whenever deemed in the public interest, the department or a county or a municipality may substitute for, relocate, or abandon any public road that is under its respective jurisdiction, provided that a county or municipality shall first obtain the approval of the department if any expenditure of federal or state funds is required. (Code 1933, § 95A-618, enacted by Ga. L. 1973, p. 947, § 1.)

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, Ch. 95-17, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section.

Authority of department and political subdivisions to vacate roads. — General Assembly has delegated to the Department of Transportation, and to counties and municipalities throughout the state, authority to relocate or abandon public roads within their respective jurisdictions. *McIntosh County v. Fisher*, 242 Ga. 66, 247 S.E.2d 863 (1978).

Vacating of street must benefit public in general. — Neither General As-

sembly nor subordinate public corporation acting under its authority can lawfully vacate a public street or highway for benefit of a private individual. The street or highway cannot be vacated unless it is for the benefit of the public that such action should be taken. *McIntosh County v. Fisher*, 242 Ga. 66, 247 S.E.2d 863 (1978).

Public benefits justifying vacating of public street or highway. — General Assembly or a subordinate public corporation acting under its authority may lawfully vacate a public street or highway in order to relieve the public from the charge of maintaining a street or highway that is no longer useful or convenient to the public, or to lay out a new street or road in its place which will be more useful and con-

venient to the public in general. *McIntosh County v. Fisher*, 242 Ga. 66, 247 S.E.2d 863 (1978).

Abandonment only to benefit private individual constitutes abuse of power. — If public interest is not the motive which prompts vacating of a street, whether partial or entire, the act of vacating is an abuse of power, and a gross abuse of power if it is authorized without reference to the rights of the public and merely for the convenience of a private individual. *McIntosh County v. Fisher*, 242 Ga. 66, 247 S.E.2d 863 (1978).

Public nonuse of road's full width is not abandonment. — If highway is legally laid out and established, the mere fact that the public does not use the highway to the highway's entire width will not of itself constitute an abandonment of any portion thereof. *State Hwy. Dep't v. Strickland*, 214 Ga. 467, 105 S.E.2d 299 (1958) (decided under former Code 1933, Ch. 95-17).

Encroachments on highway continually used cannot be legalized by mere lapse of time. *State Hwy. Dep't v. Strickland*, 214 Ga. 467, 105 S.E.2d 299 (1958) (decided under former Code 1933, Ch. 95-17).

Counties and citizens may establish easements over abandoned roads. — Power and authority conferred upon State Highway Board (now State Transportation Board) to change or relocate state-aid roads, and thus to abandon portions of those roads, does not specifically or by necessary implication include power to foreclose rights of counties or general public to establish easements over abandoned portions of such roads. *Southern Ry. v. Wages*, 203 Ga. 502, 47 S.E.2d 501 (1948) (decided under former Code 1933, Ch. 95-17).

Cited in *Stein v. Maddox*, 234 Ga. 164, 215 S.E.2d 231 (1975); *Hall County Historical Soc'y, Inc. v. Georgia DOT*, 447 F. Supp. 741 (N.D. Ga. 1978).

RESEARCH REFERENCES

ALR. — Reversion of title upon abandonment or vacation of public street or highway, 70 ALR 564.

Right of private citizen to complain of rerouting of highway or removal or change of route or directional signs, 97 ALR 192.

Necessity for adhering to statutory procedure prescribed for vacation, discontinuance, or change of route of street or highway, 175 ALR 760.

32-7-2. Procedure for abandonment.

(a)(1) Before abandoning any public road on the state highway system, the department shall confer with the governing authority of the counties or municipalities concerned and give due consideration to their wishes in such abandonment; but in case of disagreement the judgment of the department shall prevail.

(2) When it is determined that a section of the state highway system has for any reason ceased to be used by the public to the extent that no substantial public purpose is served by it and after having conferred with the counties and municipalities, the department, by certification signed by the commissioner and accompanied by a plat or sketch, may declare that section of the state highway system abandoned. Thereafter, that section of road shall no longer be a part of the state highway system and the rights of the public in and to the section of road as a public road shall cease.

(3) Prior to certifying the abandonment of a road or section thereof, the department shall give notice of its intentions to the counties or municipalities through which such road passes.

(4) If such county or municipality, by proper resolution, indicates its willingness and desire to take over the road that is proposed to be abandoned and to maintain such road, the certificate of abandonment shall so state; and thereafter the abandoned road shall form part of the county road or municipal street system of the particular county or municipality. Whenever the department abandons a road and a county or a municipality takes over the road, the department shall convey, by quitclaim deed executed by the commissioner, such road to the county or municipality. If the appropriate county or municipality is unwilling to take over the road and maintain it, the property may be disposed of by the department as provided in Code Section 32-7-4, provided that, if the county or municipality has not indicated its desire to take over the road within 30 days after receiving notice, it shall be conclusively presumed that the county or municipality is unwilling to take over the road; and provided, further, that before the department disposes of the abandoned road it shall give 15 days' notice to the county or municipality, during which time such county or municipality may reconsider its decision and take over the road.

(b)(1) When it is determined that a section of the county road system has for any reason ceased to be used by the public to the extent that no substantial public purpose is served by it or that its removal from the county road system is otherwise in the best public interest, the county, by certification recorded in its minutes, accompanied by a plat or sketch, and, after notice to property owners located thereon, after notice of such determination is published in the newspaper in which the sheriff's advertisements for the county are published once a week for a period of two weeks, and after a public hearing on such issue, may declare that section of the county road system abandoned. Thereafter, that section of road shall no longer be part of the county road system and the rights of the public in and to the section of road as a public road shall cease.

(2) Prior to certifying the abandonment of a road or section thereof, the county shall give notice of its intention to the municipality into which or through which any part of such road passes.

(3) If such municipality, by proper resolution, indicates its willingness and desire to take over the road that is proposed to be abandoned and to maintain such road, the certification of abandonment shall so state; and thereafter that part of the abandoned road within the municipality shall form part of the municipal street system of the particular municipality. Whenever a county abandons a road and a municipality takes over the road, the county, by quitclaim

deed executed by the chairman or presiding officer, shall convey such road to the municipality. If such municipality is unwilling to take over the road and maintain it, the property may be disposed of by the county as provided for in Code Section 32-7-4, provided that, if the municipality has not indicated its desire to take over the road within 30 days after receiving notice, it shall be conclusively presumed the municipality is unwilling to take over the road; and provided, further, that before the county disposes of the abandoned road it shall give 15 days' notice to the municipality during which time such municipality may reconsider its decision and take over the road.

(c) When it is determined that a section of the municipal street system has for any reason ceased to be used by the public to the extent that no substantial public purpose is served by it or that its removal from the municipal street system is otherwise in the best public interest, the municipality, by certification recorded in its minutes, accompanied by a plat or sketch, and after notice to property owners located thereon, may declare that section of the municipal street system abandoned. Thereafter, that section of road shall no longer be a part of the municipal street system and the rights of the public in and to that section of street as a public road shall cease. The property may be disposed of by the municipality as provided in Code Section 32-7-4. (Code 1933, § 95A-619, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1974, p. 1422, § 16; Ga. L. 1994, p. 294, § 1; Ga. L. 2010, p. 399, § 1/SB 354.)

The 2010 amendment, effective May 24, 2010, inserted "or that its removal from the county road system is otherwise in the best public interest" in the middle of the first sentence of paragraph (b)(1); and inserted "or that its removal from the municipal street system is otherwise in the best public interest" in the middle of the first sentence of subsection (c).

Law reviews. — For article surveying legislative and judicial developments in

Georgia local government law for 1978-79, see 31 Mercer L. Rev. 155 (1979). For annual survey on law of real property, see 43 Mercer L. Rev. 353 (1991). For annual survey article on local government law, see 52 Mercer L. Rev. 341 (2000). For survey article on local government law for the period from June 1, 2002 to May 31, 2003, see 55 Mercer L. Rev. 353 (2003). For article, "Administrative Law," see 63 Mercer L. Rev. 47 (2011).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1873, § 608, former Code 1910, § 644, and former Code 1933, Ch. 95-17, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section.

The 1994 amendment to O.C.G.A. § 32-7-2 demonstrates that notice by publication does not satisfy the requirement of notice to adjoining landowners. The

1994 amendment added a provision requiring a county to publish notice of the determination to abandon a road in the legal organ of the county, but also retained the language requiring "notice to property owners located thereon." By adding a notice by publication requirement, the legislature must have intended to add a requirement different from the requirement of notice to adjoining property owners. *Talbot County Bd. of Comm'rs v. Woodall*, 275 Ga. 281, 565 S.E.2d 465 (2002).

Duty of county to repair and maintain road. — When the public has ceased to use a road for reasons other than the road's state of disrepair, a county is not required to undertake to repair and maintain the road as a prerequisite to abandoning the road in accordance with O.C.G.A. § 32-7-2. *Smith v. Board of Comm'rs*, 264 Ga. 316, 444 S.E.2d 775 (1994).

Group of landowners were properly granted a writ of mandamus requiring a county to maintain an adjacent road, as the county acquired title to the road by prescriptive acquisition, abandonment was not an issue, and compliance with O.C.G.A. § 32-3-3(c) did not need to be shown when a roadway was otherwise acquired by prescription; moreover, urging that a county's failure to meet the county's obligation to maintain public roads was an acceptable method of abandoning a roadway would encourage counties to disregard their public duty. *Shearin v. Wayne Davis & Co., P.C.*, 281 Ga. 385, 637 S.E.2d 679 (2006).

Source of authority to abandon roads. — Through enactment of Ga. L. 1973, p. 947, § 1 (see O.C.G.A. §§ 32-7-1), the General Assembly delegated to the Department of Transportation, and to counties and municipalities throughout the state, authority to relocate or abandon public roads within their respective jurisdictions. *McIntosh County v. Fisher*, 242 Ga. 66, 247 S.E.2d 863 (1978).

When abandonment of road is justified. — When there is evidence that an abandoned road has ceased to be used by the public to the extent that the road serves no substantial public purpose, as specified by subsection (b) of this section, the action of a governmental authority in abandoning a road cannot be declared an abuse of discretion, at least on the ground that the governmental authority was erroneous in the government's determination that abandoning the road would be in the public interest. *McIntosh County v. Fisher*, 242 Ga. 66, 247 S.E.2d 863 (1978) (see O.C.G.A. § 32-7-2).

Abandonment not justified. — Fact that no substantial public purpose was served by a road due to the county's failure to comply with the county's duty to

repair and maintain the road did not authorize the county to abandon the road pursuant to O.C.G.A. § 32-7-2. *Cherokee County v. McBride*, 262 Ga. 460, 421 S.E.2d 530 (1992).

Subsection (b) not applicable to relocation of county road. — Subsection (b) of this section does not apply to the relocation of a portion of the county road still in use by the public to such an extent that a substantial public purpose is served by the road, but only when the county abandons all or part of a county road which has for any reason ceased to be used by the public to the extent that no substantial public purpose is served by the road. *Miller v. Lanier County*, 243 Ga. 58, 252 S.E.2d 909 (1979) (see O.C.G.A. § 32-7-2).

County commission's consideration of economic factors involved in the decision whether to abandon a road was proper and did not constitute an abuse of discretion. *Torbett v. Butts County*, 271 Ga. 521, 520 S.E.2d 684 (1999).

Abandonment must be for benefit of public in general. — Neither the General Assembly nor a subordinate public corporation acting under its authority can lawfully vacate a public street or highway for the benefit of a private individual, but only for the benefit of the public; the benefit may be either in relieving the public from the charge of maintaining a street or highway that is no longer useful or convenient to the public or by laying out a new street or road in its place which will be more useful and convenient to the public in general. *McIntosh County v. Fisher*, 242 Ga. 66, 247 S.E.2d 863 (1978).

Abandonment for individual's benefit constitutes abuse of power. — If public interest is not partial or entire motive which prompts vacating of street, the act of vacating is an abuse of power, a gross abuse if it is authorized without reference to the rights of the public and merely to serve the convenience of a private individual. *McIntosh County v. Fisher*, 242 Ga. 66, 247 S.E.2d 863 (1978).

Abandonment not found. — Public road was not abandoned when the board of county commissioners had not taken official action, but had simply had several discussions concerning the road, and had

received, but not finally acted on, requests to close the road. *McDilda v. Board of Comm'rs*, 230 Ga. App. 530, 497 S.E.2d 25 (1998).

Trial court's denial of a property owner's motions for a directed verdict and for judgment notwithstanding the verdict under O.C.G.A. § 9-11-50 was proper because the county failed to follow all of the statutory steps needed to properly close a road that bordered on an adjoining landowner's properties, pursuant to O.C.G.A. § 32-7-2(b)(1), and the evidence did not demand a verdict that the road was still public. *Lovell v. Rea*, 278 Ga. App. 740, 629 S.E.2d 459 (2006).

Notice. — Paragraph (b)(1) of O.C.G.A. § 32-7-2 requires merely that notice be given before a road is declared abandoned. Lack of proper notice is not a ground for granting a petitioner in mandamus the ultimate relief of ordering a road reopened. *Carnes v. Charlock Invs. (USA), Inc.*, 258 Ga. 771, 373 S.E.2d 742 (1988).

When the county sought to abandon two roads, notice by publication was insufficient to meet the requirement of notice to adjoining property owners; thus, the showing of such notice by the owners who claimed title to the roads did not entitle them to summary judgment. *Talbot County Bd. of Comm'rs v. Woodall*, 275 Ga. 281, 565 S.E.2d 465 (2002).

Board may not foreclose public or county acquisition of easements. — Authority conferred upon the State Highway Board (now State Transportation Board) to change or relocate state-aid roads, and thus to abandon portions of those roads, does not specifically or by necessary implication include the power to foreclose rights of counties or general

public to establish easements over abandoned portions of such roads. *Southern Ry. v. Wages*, 203 Ga. 502, 47 S.E.2d 501 (1948) (decided under former Code 1933, Ch. 95-17).

Alteration of old road involves discontinuance of that part which is altered, and it is lawful to provide for both alteration and discontinuance in the same proceedings, and under citation which refers merely to alteration. *Ponder v. Shannon*, 54 Ga. 187 (1875); *Barnard v. Durrence*, 22 Ga. App. 8, 95 S.E. 372 (1918) (decided under former Code 1910, § 644).

Nonuse of full width of roads does not constitute abandonment. — If a highway is legally laid out and established, the mere fact that the public does not use the highway to the highway's entire width will not of itself constitute an abandonment of any portion thereof. *State Hwy. Dep't v. Strickland*, 214 Ga. 467, 105 S.E.2d 299 (1958) (decided under former Code 1933, Ch. 95-17).

Encroachments on a highway continually used cannot be legalized by mere lapse of time; limited use will not lessen the right of the public to use the entire width of the road whenever increased travel and exigencies of the public render this desirable. *State Hwy. Dep't v. Strickland*, 214 Ga. 467, 105 S.E.2d 299 (1958) (decided under former Code 1933, Ch. 95-17).

Cited in *Stein v. Maddox*, 234 Ga. 164, 215 S.E.2d 231 (1975); *Hall County Historical Soc'y, Inc. v. Georgia DOT*, 447 F. Supp. 741 (N.D. Ga. 1978); *Edmund v. Odum*, 245 Ga. 358, 265 S.E.2d 53 (1980); *Peppers v. Elder*, 248 Ga. 136, 281 S.E.2d 582 (1981); *Glass v. Carnes*, 260 Ga. 627, 398 S.E.2d 7 (1990).

OPINIONS OF THE ATTORNEY GENERAL

County must maintain roads on county road system located within municipality. — Because the county must maintain roads on the county road system and because public roads are not removed from the system by mere annexation into a municipality where the road

lies, the county must continue to maintain the roads on the county road system which are in areas annexed into a municipality until the governing authority of the county removes the roads from the county road system by appropriate action. 1976 Op. Att'y Gen. No. U76-21.

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Highways, Streets, and Bridges, §§ 148, 149, 174 et seq., 218 et seq.

C.J.S. — 39A C.J.S., Highways, §§ 128, 130.

ALR. — Reversion of title upon abandonment or vacation of public street or highway, 70 ALR 564.

Precautions to be taken for safety of travelers where highway or part of highway is abandoned, 71 ALR 1206.

Alteration or relocation of street or highway as abandonment or vacation of parts not included, 158 ALR 543.

Necessity for adhering to statutory procedure prescribed for vacation, discontinuance, or change of route of street or highway, 175 ALR 760.

Relative rights and liabilities of abutting owners and public authorities in parkways in center of street, 81 ALR2d 1436.

32-7-3. Authority of department, counties, and municipalities to dispose of property no longer needed for public road purposes.

Whenever any property has been acquired in any manner by the department, a county, or a municipality for public road purposes and thereafter the department, county, or municipality determines that all or any part of the property or any interest therein is no longer needed for such purposes because of changed conditions, the department or the county or municipality is authorized to dispose of such property or such interest therein in accordance with Code Section 32-7-4. Any disposition of property acquired for utility relocation, as provided for in Code Section 32-6-172, or on which utilities are located shall not be subject to Code Section 32-7-4; and no provision of this title shall be construed to prevent the department from conveying to the federal government land or interests in land acquired for federal parkways in Georgia, as provided in Article 2 of Chapter 3 of this title. (Code 1933, § 95A-620, enacted by Ga. L. 1973, p. 947, § 1.)

JUDICIAL DECISIONS

Offer to original owner of property acquired, then rezoned. — If a county or municipality acquires land for public road purposes, rezones the land in a manner increasing the land's value, and then decides to sell the property, the county or municipality has decided that the property was no longer needed for public road purposes at the time of the rezoning and,

thus, the property must be offered to the original owner based on the land's value under the land's pre-rezoning classification. *DeWolff v. Fulton County*, 253 Ga. 744, 325 S.E.2d 140 (1985).

Cited in *Hall County Historical Soc'y, Inc. v. Georgia DOT*, 447 F. Supp. 741 (N.D. Ga. 1978); *Swims v. Fulton County*, 267 Ga. 94, 475 S.E.2d 597 (1996).

32-7-4. Procedure for disposition of property.

(a)(1) In disposing of property, as authorized under Code Section 32-7-3, the department, a county, or a municipality shall notify the owner of such property at the time of its acquisition or, if the tract

from which the department, a county, or a municipality acquired its property has been subsequently sold, shall notify the owner of abutting land holding title through the owner from whom the department, a county, or a municipality acquired its property. The notice shall be in writing delivered to the appropriate owner or by publication if his or her address is unknown; and he or she shall have the right to acquire, as provided in this subsection, the property with respect to which the notice is given. Publication, if necessary, shall be in a newspaper of general circulation in the county where the property is located. If, after a search of the land and probate records, the address of any interested party cannot be found, an affidavit stating such facts and reciting the steps taken to establish the address of any such person shall be placed in the department, county, or municipal records and shall be accepted in lieu of service of notice by mailing the same to the last known address of such person. After properly completing and filing such affidavit, the department, county, or municipality may dispose of the property in accordance with the provisions of subsection (b) of this Code section.

(2)(A) When an entire parcel acquired by the department, a county, or a municipality, or any interest therein, is being disposed of, it may be acquired under the right created in paragraph (1) of this subsection at such price as may be agreed upon, but in no event less than the price paid for its acquisition. When only remnants or portions of the original acquisition are being disposed of, they may be acquired for the market value thereof at the time the department, county, or municipality decides the property is no longer needed. The department shall use a real estate appraiser with knowledge of the local real estate market who is licensed in Georgia and not an employee of the department to establish the fair market value of the property prior to listing such property.

(B) The provisions of subparagraph (A) of this paragraph notwithstanding, if the value of the property is \$30,000.00 or less as determined by department estimate, the department, county, or municipality may negotiate the sale.

(3) If the right of acquisition is not exercised within 60 days after due notice, the department, county, or municipality may proceed to sell such property as provided in subsection (b) of this Code section.

(4) When the department, county, or municipality in good faith and with reasonable diligence attempted to ascertain the identity of persons entitled to notice under this Code section and mailed such notice to the last known address of record of those persons or otherwise complied with the notification requirements of this Code section, the failure to in fact notify those persons entitled thereto shall not invalidate any subsequent disposition of property pursuant to this Code section.

(b)(1)(A) Unless a sale of the property is made pursuant to paragraph (2) or (3) of this subsection, such sale shall be made to the bidder submitting the highest of the sealed bids received after public advertisement for such bids for two weeks. If the highest of the sealed bids received is less than but within 15 percent of the established market value, the department may accept that bid and convey the property in accordance with the provisions of subsection (c) of this Code section. The department or the county or municipality shall have the right to reject any and all bids, in its discretion, to readvertise, or to abandon the sale.

(B) Such public advertisement shall be inserted once a week in such newspapers or other publication, or both, as will ensure adequate publicity, the first insertion to be at least two weeks prior to the opening of bids, the second to follow one week after the first publication. Such advertisement shall include but not be limited to the following items:

- (i) A description sufficient to enable the public to identify the property;
- (ii) The time and place for submission and opening of sealed bids;
- (iii) The right of the department or the county or municipality to reject any one or all of the bids;
- (iv) All the conditions of sale; and
- (v) Such further information as the department or the county or municipality may deem advisable as in the public interest.

(2)(A) Such sale of property may be made by a county or municipality by listing the property through a real estate broker licensed under Chapter 40 of Title 43 who has a place of business located in the county where the property is located or outside the county if no such business is located in the county where the property is located. Property shall be listed for a period of at least three months. Such property shall not be sold at less than its fair market value. The department shall use a real estate appraiser with knowledge of the local real estate market who is licensed in Georgia and not an employee of the department to establish the fair market value of the property prior to listing such property. All sales shall be approved by the governing authority of the county or municipality at a regular meeting and shall be open to the public at which meeting public comments shall be allowed regarding such sale.

(B) Commencing at the time of the listing of the property as provided in subparagraph (A) of this paragraph, the county or municipality shall provide for a notice to be inserted once a week

for two weeks in the legal organ of the county indicating the names of real estate brokers listing the property for the political subdivision. The county or municipality may advertise in magazines relating to the sale of real estate or similar publications.

(C) The county or municipality shall have the right to reject any and all offers, in its discretion, and to sell such property pursuant to the provisions of paragraph (1) of this subsection.

(3)(A) Such sale of property may be made by a county or municipality to the highest bidder at a public auction conducted by an auctioneer licensed under Chapter 6 of Title 43. Such property shall not be sold at less than its fair market value.

(B) The county or municipality shall provide for a notice to be inserted once a week for the two weeks immediately preceding the auction in the legal organ of the county including, at a minimum, the following items:

- (i) A description sufficient to enable the public to identify the property;
- (ii) The time and place of the public auction;
- (iii) The right of the department or the county or municipality to reject any one or all of the bids;
- (iv) All the conditions of sale; and
- (v) Such further information as the department or the county or municipality may deem advisable as in the public interest.

The county or municipality may advertise in magazines relating to the sale of real estate or similar publications.

(C) The county or municipality shall have the right to reject any and all offers, in its discretion, and to sell such property pursuant to the provisions of paragraph (1) of this subsection.

(c) Any conveyance of property shall require the approval of the department, county, or municipality, by order of the commissioner on behalf of the department and, in the case of a county or municipality, by resolution, to be recorded in the minutes of its meeting. If the department or the county or municipality approves a sale of property, the commissioner, chairperson, or presiding officer may execute a quitclaim deed conveying such property to the purchaser. All proceeds arising from such sales shall be paid into and constitute a part of the funds of the seller. (Code 1933, § 95A-621, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1974, p. 1422, § 16A; Ga. L. 1995, p. 1195, § 1; Ga. L. 2008, p. 726, § 1/SB 444; Ga. L. 2009, p. 8, § 32/SB 46.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1995, “paragraph” was substituted for “paragraphs” in subparagraph (b)(1)(A).

Pursuant to Code Section 28-9-5, “paragraph (1) of this subsection” was substituted for “the preceding paragraph” in the first sentence of paragraph (a)(2).

JUDICIAL DECISIONS

Intergovernmental exchanges not governed by disposal provisions. — Exchange of condemned property between the Department of Transportation and a county did not require application of the notice requirements and repurchase rights of O.C.G.A. § 32-7-4. *Swims v. Fulton County*, 267 Ga. 94, 475 S.E.2d 597 (1996).

Offer to original owner of property acquired, then rezoned. — If a county or municipality acquires land for public road purposes, rezones the land in a manner increasing the land’s value, and then decides to sell the property, the county or municipality has decided that the property was no longer needed for public road purposes at the time of the rezoning and, thus, the property must be offered to the

original owner based on the land’s value under the land’s pre-rezoning classification. *DeWolff v. Fulton County*, 253 Ga. 744, 325 S.E.2d 140 (1985).

Landowner’s dismissal of claim against county barred claim that county failed to comply with § 32-7-4. — Because a landowner dismissed all the claims alleged against a county, a claim that the county improperly abandoned a public road due to the county’s failure to comply with O.C.G.A. § 32-7-4 had also been relinquished. *McRae v. SSI Dev., LLC*, 283 Ga. 92, 656 S.E.2d 138 (2008).

Cited in *Hall County Historical Soc’y, Inc. v. Georgia DOT*, 447 F. Supp. 741 (N.D. Ga. 1978); *Turner v. City of Tallapoosa*, 289 Ga. 138, 709 S.E.2d 211 (2011).

32-7-5. Leasing property not needed for public road purposes.

(a) In order that any interest in real property acquired for public road or other transportation purposes may be used most economically, the department, counties, or municipalities, in addition to the authority granted in Code Section 32-7-3 to dispose of property no longer needed and in subsection (b) of Code Section 32-3-3 to exchange property, may, notwithstanding Article 2 of Chapter 16 of Title 50, the “State Properties Code,” improve, use, maintain, or lease any interest in property acquired for public road or other transportation purposes that is not presently needed for such purposes.

(b) If the department, a county, or municipality decides to lease any such property or interest therein, the owner of such property at the time of its acquisition or his successor in interest shall have the right to lease such property at an appraised fair market value to be determined by the department, county, or municipality for such period of time until the property is needed for public road or other transportation purposes. However, if at the time of acquisition such property was leased to a tenant, the tenant, instead of the owner or his successor in interest, shall have the first right to lease such property at the appraised fair market value. If the owner, his successor in interest, or the tenant of the property does not lease such property, the department, county, or municipality shall have the right to lease such property at a price equal

to the highest sealed public bid, if the bid is acceptable to the department, county, or municipality, for such period of time until the property is needed for public road or other transportation purposes. If no bids or bids which are insufficient are received, the department, county, or municipality may readvertise for new public bids. The department, county, or municipality may negotiate a lease with any state or federal agency, county, or municipality without the aforesaid requirement of sealed bids or leasing to the former owner. The department, county, or municipality shall have the right to impose reasonable restrictions, terms, or conditions on the use of such leased property.

(c) Separate and distinct from the department's authority to lease property in subsection (b) of this Code section, the department has the authority to negotiate a lease of any property contained within the rights of way of any nonlimited-access public road and not presently needed for public road purposes or rights of way under bridges or viaducts on limited-access public roads and not presently needed for public road purposes. If the department decides to lease any such property, the property shall be leased, at an appraised fair market value to be determined by the department, to the owner or the lessee of the property adjacent to the department's rights of way for the purposes of parking. Such property shall only be used for the purposes of providing parking and shall not be subleased without the department's prior approval. Plans for the use of said property must be submitted to and approved by the department prior to any construction. Regardless of any financial expenditures by the lessee, no lease granted under this subsection shall merge into and become a property interest of the lessee or a sublessee. The department shall reserve the right to terminate any lease without cause upon 30 days' written notice to the lessee. Notwithstanding any provisions of Code Section 48-2-17, all net revenues derived from the lease of any of the department's property used for the purposes of providing parking shall be utilized by the department to offset the cost of maintaining the public roads of the state.

(d) Unless said property or interest therein is leased to a tax-exempt person or body, it shall be subject to all applicable taxes, both real and personal.

(e) The department or any county or municipality may negotiate a lease with any state or federal agency, county, or municipality for the use of the property for any purpose for which the agency, county, or municipality may put property it owns in fee and without complying with the requirement for sealed bids or leasing to the former owner contained in this Code section. (Code 1933, § 95A-622, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1980, p. 775, § 1; Ga. L. 1988, p. 1431, § 2.)

JUDICIAL DECISIONS

Cited in Knight v. DOT, 239 Ga. 368, 236 S.E.2d 826 (1977); Hall County Historical Soc'y, Inc. v. Georgia DOT, 447 F. Supp. 741 (N.D. Ga. 1978); DeWolff v.

Fulton County, 253 Ga. 744, 325 S.E.2d 140 (1985); Swims v. Fulton County, 267 Ga. 94, 475 S.E.2d 597 (1996).

CHAPTER 8

RELOCATION ASSISTANCE

Sec.		Sec.	
32-8-1.	Relocation assistance in accordance with Uniform Act; real property acquisition.	32-8-4.	Persons displaced by state-aid projects on the state highway system.
32-8-2.	Last resort replacement housing for persons displaced by federal-aid projects.	32-8-5.	Last resort replacement housing for persons displaced by state-aid projects on the state highway system.
32-8-3.	Relocation assistance to persons displaced by federal-aid river and harbor improvement projects; real property acquisition [Repealed].	32-8-6.	Construction of chapter; power of department to take action necessary to secure benefit of federal-aid programs.

Cross references. — Relocation assistance for persons, businesses, and others displaced by federal-aid public works projects, T. 22, C. 4. Duties of counties regard-

ing relocation assistance, § 32-4-41. Duties of municipalities regarding relocation assistance, § 32-4-92.

RESEARCH REFERENCES

ALR. — Validity, construction, and application of state relocation assistance laws, 49 ALR4th 491.

32-8-1. Relocation assistance in accordance with Uniform Act; real property acquisition.

(a) As used in this chapter, the term “Uniform Act” means the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended by the Uniform Relocation Act Amendments of 1987, Title IV of Public Law 100-17. The department, as required by the Uniform Act:

(1) Shall make or approve payments, in accordance with Section 210 of the Uniform Act, for relocation expenses and replacement housing expenses and shall provide relocation assistance advisory services outlined in Section 205 of the Uniform Act; and

(2) Shall make or approve payments, in accordance with Section 305(2) of the Uniform Act, to any person, family, business, farm operation, or nonprofit organization whose real property has been acquired by the department or is subject to a condemnation proceeding brought by the department for any federal-aid project in the state, the costs of which are now or hereafter financed in whole or in part from federal funds allocated to the department:

(A) For expenses incident to the transfer of real property acquired by the department, prepayment of mortgage penalties, and a pro rata portion of real property taxes on real property acquired by the department;

(B) For litigation expenses actually incurred by the condemnee in any condemnation proceeding brought by the department if the final judgment is that the department cannot acquire the real property by condemnation or the condemnation proceeding is formally abandoned by the department; or

(C) For litigation expenses incurred by the plaintiff in any inverse condemnation proceeding brought against the department in which judgment is rendered in favor of the plaintiff.

(b) In acquiring real property for any federal-aid project, the costs of which are financed in whole or in part from federal funds allocated to the department, the department shall be guided to the greatest extent practicable under state law by the land acquisition policies in Section 301 of the Uniform Act and the provisions of Section 302 of the Uniform Act.

(c) Nothing contained in this Code section shall be construed as creating in any condemnation proceeding brought under the power of eminent domain any element of value or of damage. (Ga. L. 1966, p. 588, § 1; Ga. L. 1969, p. 495, §§ 3, 6; Ga. L. 1972, p. 931, §§ 3-10; Code 1933, § 95A-623, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1982, p. 3, § 32; Ga. L. 1988, p. 1737, § 3.)

U.S. Code. — The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, referred to in this

Code section, is codified as 42 U.S.C. § 4601 et seq.

JUDICIAL DECISIONS

Department need not abide by federal prohibition of compensation for enhancement. — By requiring the Department of Transportation to be guided by federal law “to the greatest extent practicable” in the department’s condemnation procedures, subsection (b) of O.C.G.A. § 32-8-1 does not thereby require the department to abide by the federal law’s prohibition of compensation for enhancement by reason of taking and does not affect the judiciary’s power to determine what constitutes just and adequate compensation. *DOT v. White*, 173 Ga. App. 68, 325 S.E.2d 397 (1984).

Relocation expenses part of “just

and adequate compensation.” — Enactment of O.C.G.A. § 32-8-1 does not alter the fact that relocation expenses, whether awarded judicially or administratively, are still a part of the “just and adequate compensation” guaranteed to condemnees under the Constitution. *DOT v. Gibson*, 251 Ga. 66, 303 S.E.2d 19 (1983).

Relocation expenses may be recovered by administrative proceeding. — Under O.C.G.A. § 32-8-1, a condemnee whose property is being acquired for federally assisted highway projects may, but is not required to, seek payment of relocation expenses directly from the Depart-

ment of Transportation in an administrative action. DOT v. Gibson, 251 Ga. 66, 303 S.E.2d 19 (1983).

Relocation expenses may be recovered in condemnation proceeding. — When the case does not involve payments under O.C.G.A. § 32-8-1, the condemnee would be able to litigate the question of the condemnee's business relocation expenses as an element of "just and adequate compensation" in the condemnation proceedings under O.C.G.A. § 32-3-1 et seq. DOT v. Gibson, 251 Ga. 66, 303 S.E.2d 19 (1983).

Seeking administrative payment of relocation expenses precludes a separate judicial determination of the same relocation expenses in the statutorily authorized condemnation proceedings. DOT v. Gibson, 251 Ga. 66, 303 S.E.2d 19 (1983).

Appeal of relocation expenses award under the Administrative Procedure Act. — If a condemnee is dissatisfied with an award of relocation expenses under O.C.G.A. § 32-8-1, the award may be appealed under the Administrative Procedure Act, O.C.G.A. Ch. 13, T. 50. DOT v. Gibson, 251 Ga. 66, 303 S.E.2d 19 (1983).

Attorney fees. — O.C.G.A. § 32-8-1 provides a remedy to recover attorney fees separate and apart from a condemnation proceeding where just and adequate compensation is at issue. DOT v. B & G Realty, Inc., 197 Ga. App. 613, 398 S.E.2d 762 (1990).

Cited in DOT v. Doss, 238 Ga. 480, 233 S.E.2d 144 (1977); DOT v. Rushing, 143 Ga. App. 235, 237 S.E.2d 722 (1977).

32-8-2. Last resort replacement housing for persons displaced by federal-aid projects.

The department shall have the authority, as a last resort, to provide replacement housing when a federal-aid project financed in whole or in part with federal aid cannot proceed to actual construction because no comparable replacement sale or rental housing is available. In carrying out the relocation assistance activities, the department, with prior concurrence of the board, shall be authorized to make payments, construct or reconstruct with its own forces, cause to be constructed or reconstructed, and purchase by deed or condemnation any real property for the purposes of providing replacement housing. The department may exchange, lease, or sell to the displaced person such replacement housing. Whenever any real property has been acquired under this Code section and thereafter the department determines that all or any part of such property or any interest therein is no longer needed for such purposes because of changed conditions, the department is authorized to dispose of such property or interest therein in accordance with subsection (b) of Code Section 32-7-4. (Code 1933, § 95A-623.2, enacted by Ga. L. 1980, p. 775, § 2; Ga. L. 1988, p. 1737, § 3.)

32-8-3. Relocation assistance to persons displaced by federal-aid river and harbor improvement projects; real property acquisition.

Reserved. Repealed by Ga. L. 1988, p. 1737, § 3, effective April 12, 1988.

Editor's notes. — This Code section enacted by Ga. L. 1979, p. 973, § 7; Ga. L. was based on Code 1933, § 95A-623.1, 1982, p. 3, § 31.

32-8-4. Persons displaced by state-aid projects on the state highway system.

The department is authorized to make or approve payments for all necessary relocation expenses, replacement housing expenses, relocation advisory services, expenses incident to the transfer of real property, and litigation expenses as provided for in subparagraphs (a)(2)(A), (a)(2)(B), and (a)(2)(C) of Code Section 32-8-1 of any individual, family, business, farm operation, or nonprofit organization displaced by a state-aid highway project on the state highway system, the cost of which is now or hereafter financed in whole or in part from state funds. The department shall be guided by the policies, provisions, and limitations of the Uniform Act. The department shall not implement any relocation assistance on any state-aid projects on the state highway system without the prior concurrence of the board. (Code 1933, § 95A-623.3, enacted by Ga. L. 1980, p. 775, § 3; Ga. L. 1988, p. 1737, § 3.)

U.S. Code. — The Uniform Act, referred to in this Code section, is known as the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and is codified as 42 U.S.C. § 4601 et seq.

32-8-5. Last resort replacement housing for persons displaced by state-aid projects on the state highway system.

The department shall have the authority, as a last resort, to provide replacement housing when a state-aid project on the state highway system cannot proceed to actual construction because no comparable replacement sale or rental housing is available. In carrying out the relocation assistance activities, the department, with prior concurrence of the board, shall be authorized to make payments, construct or reconstruct with its own forces, cause to be constructed or reconstructed, and purchase by deed or condemnation any real property for the purposes of relocating or constructing replacement housing. The department may exchange, lease, or sell to the displaced person such replacement housing. Whenever any real property has been acquired under this Code section and thereafter the department determines that all or any part of said property or any interest therein is no longer needed for such purposes because of changed conditions, the department is authorized to dispose of such property or interest therein in accordance with subsection (b) of Code Section 32-7-4. (Code 1933, § 95A-623.4, enacted by Ga. L. 1980, p. 775, § 4; Ga. L. 1988, p. 1737, § 3.)

32-8-6. Construction of chapter; power of department to take action necessary to secure benefit of federal-aid programs.

(a) Nothing in this chapter is intended to conflict with any federal law, and in case of such conflict such portion as may be in conflict with such federal law is declared of no effect to the extent of the conflict.

(b) The department is authorized to take the necessary steps to secure the full benefit of any federal-aid program and to meet any contingencies not provided for in this chapter, abiding at all times by a fundamental purpose to plan, construct, reconstruct, and maintain, as economically as possible, the public roads and other major transportation facilities of Georgia which will best promote the interest, welfare, and progress of the citizens of Georgia. (Code 1933, § 95A-624, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1979, p. 973, § 8; Ga. L. 1988, p. 1737, § 3.)

CHAPTER 9

MASS TRANSPORTATION

Sec.		Sec.	
32-9-1.	Financial support and project grants for research, programs, and purchases.	32-9-8.	Licensing airports.
32-9-2.	Operation by department of facilities or systems; financial assistance to systems.	32-9-9.	Creation of transit authority by special legislation; authority's attributes and powers.
32-9-3.	Financial assistance for transportation services for elderly and handicapped persons [Repealed].	32-9-10.	Implementation of federal Intermodal Surface Transportation Efficiency Act of 1991.
32-9-4.	Designation of travel lanes; use of such lanes.	32-9-11.	Transit services with local governments.
32-9-4.1.	FlexAuto lanes.	32-9-12.	Pilot program for funding streetcar projects.
32-9-5.	Ride-sharing programs.	32-9-13.	Suspension of restrictions on use of annual proceeds from local sales and use taxes by public transit authorities.
32-9-6.	Financial assistance for rail service.	32-9-14.	Board of directors of Metropolitan Atlanta Rapid Transit Authority.
32-9-7.	Financial assistance for airport development.		

Editor's notes. — Ga. L. 2004, p. 898, § 2, not codified by the General Assembly, provides that: "The department will form a pilot program that will provide a state level flow through point for any available federal funding or other forms of financial and development sources and assistance for local, regional, and public-private streetcar projects. Any funding through bonds for such pilot and grant program shall be administered by the State Road

and Tollway Authority." Ga. L. 2006, p. 498, § 5/SB 150, not codified by the General Assembly, provides for the repeal of Ga. L. 2004, p. 898, § 2, effective April 27, 2006.

Administrative rules and regulations. — Grant programs, Official Compilation of the Rules and Regulations of the State of Georgia, State Department of Transportation, Chapter 672-12.

32-9-1. Financial support and project grants for research, programs, and purchases.

- (a) As used in this Code section, the term:
- (1) "Mass transportation" means all modes of transportation serving the general public which are appropriate, in the judgment of the department, to transport people, commodities, or freight by highways, rail, air, water, or other conveyance, exclusive of wires and pipelines.
- (2) "Mass transportation facilities" means everything necessary for the conveyance and convenience of passengers and the safe and prompt transportation of freight on those modes of transportation serving the general public which are appropriate, in the judgment of

the department, to transport people, commodities, or freight by highways, rail, air, water, or other conveyance, exclusive of wires and pipelines.

(3) "Project grant" means the state's share of the cost of carrying out a particular project authorized by this Code section. This share may be provided in direct financial support, goods or products, personnel services, or any combination thereof.

(b) Subject to general fund appropriations for such purposes and any provisions of Chapter 5 of this title to the contrary notwithstanding, the department is authorized, within the limitations provided in paragraphs (1) and (2) of this subsection, to provide to municipalities, counties, regional commissions, authorities, state agencies, and public and private mass transportation operators:

(1) Financial support for research concerning mass transportation, by contract or otherwise; and

(2) Project grants to supplement federal, local, or federal and local funds for use:

(A) In providing for studies, analyses, and planning and development of programs for mass transportation service and facilities;

(B) In providing for research, development, and demonstration projects in all phases of mass transportation;

(C) In providing for programs designed solely to advertise, promote, and stimulate the development and use of mass transportation facilities; and

(D) In providing for the purchase of facilities and equipment, including rolling stock, used or to be used for the purpose of mass transportation.

(c)(1) The governing bodies of municipalities, counties, regional commissions, authorities, state agencies, and public and private mass transportation operators may, by formal resolution, apply to the department for financial support and project grants provided by this Code section.

(2) The use of funds or grants shall be for the purposes set forth in this Code section and, without limiting the generality of the foregoing, may be used for local contributions required by the federal Urban Mass Transportation Act of 1964, as amended, or any other federal law concerning mass transportation.

(3) The department shall review the proposal and, if satisfied that the proposal is in accordance with the purposes of this Code section, may, with the approval of the commissioner, enter into a financial

support or project grant agreement subject to the condition that the financial support or project grant be used in accordance with the terms of the proposal.

(4) The time of payment of the financial support or project grant and any conditions concerning such payment shall be set forth in the financial support or project grant agreement.

(d) In order to effectuate and enforce this Code section, the department is authorized to promulgate necessary rules and regulations and to prescribe conditions and procedures in order to assure compliance in carrying out the purposes for which financial support and project grants may be made in accordance with this Code section.

(e) The department is directed to administer this program with such flexibility as to permit full cooperation between federal, state, and local governments, agencies, and instrumentalities so as to result in an effective and economical program.

(f) Funds appropriated to the department pursuant to Article III, Section IX, Paragraph VI(b) of the Constitution of Georgia may not be utilized for any of the purposes set out in this Code section.

(g) No financial support or project grant provided for in this Code section may be made to any private mass transportation operator without prior concurrence of the State Transportation Board. (Code 1933, § 95A-1301, enacted by Ga. L. 1977, p. 817, § 2; Ga. L. 1982, p. 3, § 32; Ga. L. 1983, p. 3, § 56; Ga. L. 1989, p. 1317, § 6.17; Ga. L. 2008, p. 181, § 20/HB 1216.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1989, “transportation” was substituted for “transportaion” in subsection (g).

Pursuant to Code Section 28-9-5, in 2008, “commissions” was substituted for “commission” in subsection (b) and paragraph (c)(1), as the original language was “development centers”.

U.S. Code. — The federal Urban Mass Transportation Act of 1964, referred to in paragraph (c)(2) of this Code section, is codified at 49 U.S.C. § 5301 et seq.

Law reviews. — For article surveying recent legislative and judicial developments in zoning, planning and environmental law, see 31 Mercer L. Rev. 89 (1979).

32-9-2. Operation by department of facilities or systems; financial assistance to systems.

(a) As used in this Code section, the term:

(1) “Capital project” has the same meaning as in 49 U.S.C.A. Section 5302(a)(1).

(2) “Construction” means the supervising, inspecting, actual building, and all expenses incidental to the acquisition, actual building, or reconstruction of facilities and equipment for use in mass transpor-

tation, including designing, engineering, locating, surveying, mapping, and acquisition of rights of way.

(3) "Mass transportation" means all modes of transportation serving the general public which are appropriate, in the judgment of the department, to transport people, commodities, or freight by highways, rail, air, water, or other conveyance, exclusive of wires and pipelines.

(b) Subject to general appropriations for such purposes, the department may, alone or in cooperation with counties, municipalities, authorities, state agencies, or private or public transit companies, plan, develop, supervise, support, own, lease, maintain, and operate mass transportation facilities or systems.

(c)(1) The department may, when funds are available from the United States government for such purposes, provide assistance to the operators of mass transportation systems or to the owners of facilities used in connection therewith for the payment of operating expenses to improve or to continue such mass transportation service by operation, lease, contract, or otherwise.

(2) The department may, when funds are available from the United States government for such purposes, participate in the acquisition, construction, and improvement of facilities and equipment, including capital projects, for use, by operation or lease or otherwise, in mass transportation service.

(3) The department's participation with state funds in those programs specified in paragraphs (1) and (2) of this subsection may be in either cash, products, or in-kind services. The department's participation with state funds shall be limited to the minimum nonfederal share of the program. The remainder shall be provided from sources other than department funds or from revenues from the operation of public mass transportation systems.

(d) The department shall not enter into any contract with any private entity for the purposes set out in subsections (b) and (c) of this Code section without the prior concurrence of the State Transportation Board.

(e) Funds appropriated to the department pursuant to Article III, Section IX, Paragraph VI(b) of the Constitution of Georgia may not be utilized for any of the purposes set out in this Code section.

(f) In order to effectuate and enforce this Code section, the department is authorized to promulgate necessary rules and regulations and to prescribe conditions and procedures in order to assure compliance in carrying out the purposes of this Code section.

(g) The department shall not be authorized, without the concurrence of the Metropolitan Atlanta Rapid Transit Authority, to receive federal financial assistance to provide mass transportation services or facilities that will duplicate those mass transportation services or facilities provided or to be provided by the Metropolitan Atlanta Rapid Transit Authority, within the City of Atlanta and Fulton and DeKalb counties, as a part of its rapid transit system, including the use of buses as well as a rail system, as that system is described in an engineering report, dated September 1971, prepared for the Metropolitan Atlanta Rapid Transit Authority by Parsons-Brinckerhoff-Tudor-Bechtel, general engineering consultants, and adopted as part of the Rapid Transit Contract and Assistance Agreement, dated September 1, 1971, between the Metropolitan Atlanta Rapid Transit Authority, the City of Atlanta, Fulton County, Georgia, and DeKalb County, Georgia. (Code 1933, § 95A-1302, enacted by Ga. L. 1977, p. 817, § 2; Ga. L. 1983, p. 3, § 56; Ga. L. 1999, p. 112, § 3; Ga. L. 2003, p. 905, § 4; Ga. L. 2012, p. 1343, § 9/HB 817.)

The 2012 amendment, effective July 1, 2012, substituted “limited to the minimum nonfederal share of the program” for “limited to a maximum of 15 percent of the cost of the program” near the end of the second sentence of paragraph (c)(3).

Cross references. — Powers and duties of department relating to Metropolitan Atlanta Rapid Transit Authority, § 32-2-2(a)(14).

Law reviews. — For article, “Standards for Smart Growth: Searching for Limits on Agency Discretion and the Georgia Regional Transportation Authority,” see 36 Ga. L. Rev. 247 (2001).

For note on 1999 amendment to this Code section, see 16 Ga. St. U.L. Rev. 233 (1999). For note on the 2003 amendment to this Code section, see 20 Ga. St. U.L. Rev. 170 (2003).

OPINIONS OF THE ATTORNEY GENERAL

State funds may be used to match federal funds for transportation services. — State funds, provided under Ga. Const. 1976, Art. IV, Sec. VIII, Para. III (see Ga. Const. 1983, Art. III, Sec. VI, Para. II) may be used to match federal funds to provide operating subsidies for intercity bus service and Amtrak passen-

ger rail service. 1980 Op. Att’y Gen. No. 80-143.

Administration of railroad safety program. — Georgia Department of Transportation lacks statutory authority necessary to engage in the administration of railroad safety program. 1978 Op. Att’y Gen. No. 78-64.

32-9-3. Financial assistance for transportation services for elderly and handicapped persons.

Reserved. Repealed by Ga. L. 1990, p. 915, § 1, effective July 1, 1990.

Editor’s notes. — This Code section was based on Ga. L. 1990, p. 915, § 1. For present similar provisions relating to financial assistance for transportation services for elderly and disabled persons, see Code Section 49-2-13.1.

Ga. L. 1995, p. 1302, § 14(24), purported to amend this Code section by substituting “disabled” for “handicapped”; however, this Code section was repealed in 1990.

32-9-4. Designation of travel lanes; use of such lanes.

(a) The department is authorized to designate travel lanes in each direction of travel on any road in the state highway system for the exclusive or preferential use of:

- (1) Buses;
- (2) Motorcycles;
- (3) Passenger vehicles occupied by two persons or more;
- (4) Vehicles bearing alternative fueled vehicle license plates issued under paragraph (7) of subsection (1) of Code Section 40-2-86.1; or
- (5) Other vehicles as designated by the department.

Where such designation has been made, the road shall be appropriately marked with such signs or other roadway markers and markings to inform the traveling public of the lane restrictions imposed.

(a.1) Upon approval through either legislative action in the United States Congress or regulatory action by the United States Department of Transportation to permit hybrid vehicles with fewer than two occupants to operate in a high occupancy vehicle lane, the department shall authorize hybrid vehicles, as defined in Code Section 40-2-76, to use the travel lanes designated for such vehicles as provided in paragraph (4) of subsection (a) of this Code section.

(b) No driver of any vehicle not authorized to be operated in a lane designated and signed for exclusive use shall operate such vehicle in such lane except to execute turning movements or in an emergency situation. Any person who violates this subsection shall be guilty of a misdemeanor, punishable as provided for in Code Section 40-6-54.

(c) No traffic lane shall be designated and signed for exclusive use pursuant to subsection (a) of this Code section without the approval of the State Transportation Board.

(d) The department is authorized to promulgate necessary rules and regulations in order to carry out the purposes of this Code section. (Code 1933, § 95A-1304, enacted by Ga. L. 1977, p. 817, § 2; Ga. L. 1993, p. 363, § 1; Ga. L. 1997, p. 1589, § 1; Ga. L. 2003, p. 450, § 2; Ga. L. 2010, p. 9, § 1-61/HB 1055.)

The 2010 amendment, effective May 12, 2010, substituted "paragraph (7) of subsection (1) of Code Section 40-2-86.1" for "Code Section 40-2-76" at the end of paragraph (a)(4).

Cross references. — Further provisions regarding designation of travel lanes and operation of vehicles within lanes, §§ 40-6-24, 40-6-48.

RESEARCH REFERENCES

ALR. — Validity of restrictions as to points at which jitney bus passengers may be taken on and discharged, 6 ALR 110. Validity and applicability of statutes relating to use of highway by private motor carriers and contract motor carriers for hire, 175 ALR 1333.

32-9-4.1. FlexAuto lanes.

(a) As used in this Code section, the term “FlexAuto lane” means an area designated as a special lane of travel created by converting emergency lane and hard shoulder areas on the left or right side of an interstate highway or other road into a rush hour traffic lane for use by automobiles during certain hours.

(b) The department, with the approval of the board, is authorized to designate FlexAuto lanes on the state highway system for the purpose of improving traffic flow in and around areas with a history of traffic congestion.

(c) Any FlexAuto lane shall be appropriately striped and marked and shall have signage appropriate to indicate its nature, as determined by the department. The department may incorporate emergency havens, emergency ramps, or emergency parking pads into the design and creation of FlexAuto lanes, as determined appropriate by the department.

(d) The hours of usage of a FlexAuto lane shall be determined by the department, not to exceed eight hours per day.

(e) It shall be unlawful for any person operating any motor vehicle to use a FlexAuto lane for purposes of travel other than emergency use outside the permitted hours of travel use, as determined and posted by the department. It shall be unlawful for any person operating any motor vehicle other than an automobile, motorcycle, or light truck to use a FlexAuto lane for purposes of travel other than emergency use at any time.

(f) Prior to implementing this Code section, the department shall, if necessary, seek to secure and implement any federal approvals, waivers, or other actions necessary or appropriate in order to implement this Code section without any loss or impairment of federal funding.

(g) FlexAuto lanes shall not be implemented at more than 80 separate locations in the state until such time as the department has completed a one-year test use of such lanes. (Code 1981, § 32-9-4.1, enacted by Ga. L. 2005, p. 684, § 2/HB 273.)

Editor's notes. — Ga. L. 2005, p. 684, § 1/HB 273, not codified by the General Assembly, provides that: "The General Assembly finds and determines and recommends as follows:

"(1) The Georgia Department of Transportation has a job of overwhelming proportions and addresses the ever-increasing transportation needs of the state through the hard work and dedication of outstanding leaders and staff;

"(2) There is a need in this state to reduce emissions and improve air quality by increasing traffic flow and reducing traffic congestion and decreasing drive times;

"(3) The Department of Transportation is urged to use creative and innovative methods to deal with gridlock and traffic congestion in Georgia and especially in the metropolitan areas;

"(4) Upon passage of this enabling legislation, the department is urged to imple-

ment FlexAuto lanes where applicable and to commence the implementation of such lanes in as timely a manner as is practicable;

"(5) The Department of Transportation is requested specifically to identify 20 major areas with a history of traffic congestion in and around our state that will derive the most benefit from the use of FlexAuto lanes and, after identifying these areas, to create and rapidly implement a plan for use of such lanes in such areas;

"(6) Studies and construction models used successfully in other areas within this country and others should be used as models where traffic flow was improved and emissions reduced by using creative and innovative methods to deal with gridlock and traffic congestion; and

"(7) The model used in Virginia is being studied by Israel, France, Japan, Germany, and England."

32-9-5. Ride-sharing programs.

Subject to general appropriations for such purposes, the department, pursuant to its rules and regulations, is authorized, alone or in cooperation with counties, municipalities, authorities, state agencies, or private or public entities, to participate in the establishment and operation of ride-sharing programs. A ride-sharing program is an undertaking designed to encourage safe and adequate transportation by increasing the number of person-trips per vehicle, regardless of the type of vehicle. (Code 1933, § 95A-1307, enacted by Ga. L. 1978, p. 1473, § 1; Ga. L. 1993, p. 373, § 1.)

32-9-6. Financial assistance for rail service.

(a) The department is designated as the state agency to offer financial assistance, in the form of a rail service continuation payment, to enable rail service, for which the Interstate Commerce Commission has determined a certificate of abandonment should be issued, to be continued.

(b) The department is authorized to receive and administer federal financial assistance and to distribute, by contract or otherwise, such federal financial assistance, alone or together with state, local, or private funds available for such purposes, for the implementation of railroad assistance programs that are designed to provide for:

- (1) The cost of rail service continuation payments;

(2) The cost of purchasing a line of railroad or other rail properties to maintain existing rail services or to provide for future rail services;

(3) The cost of rehabilitating and improving rail properties on a line of railroad to the extent necessary to permit adequate and efficient rail service on such line; or

(4) The cost of reducing the cost of the lost rail service in a manner less expensive than continuing rail service.

Subject to general fund appropriations for these purposes, the department is authorized to expend state funds to the extent necessary to pay the state's share of such payments.

(c) The department shall provide to the Georgia Public Service Commission the pertinent information it may possess regarding a proposed abandonment of a railroad line and shall assist the Public Service Commission, as required, in developing the state's position on the abandonment. The Public Service Commission shall provide to the department the pertinent information it may possess concerning any railroad line for which abandonment has been requested in order to assist the department in preparing an economic and operational analysis of the line.

(d) Should the department decide to implement a railroad assistance program in accordance with paragraph (4) of subsection (b) of this Code section, the Public Service Commission will use its best efforts, within the scope of its powers and responsibilities, to assist the department in implementing such a program.

(e) The department is authorized to promulgate reasonable rules and regulations for the implementation and administration of this Code section.

(f) The department shall not implement or propose to implement any railroad assistance program without the prior concurrence of the State Transportation Board.

(g) Funds appropriated to the department pursuant to Article III, Section IX, Paragraph VI(b) of the Constitution of Georgia may not be utilized for any of the purposes set out in this Code section. (Code 1933, § 95A-1305, enacted by Ga. L. 1977, p. 870, § 1; Ga. L. 1982, p. 3, § 32; Ga. L. 1983, p. 3, § 56.)

Cross references. — Railroads and rail service generally, T. 46, C. 8 and T. 46, C. 9.

32-9-7. Financial assistance for airport development.

(a) So that the State of Georgia may effectively and responsibly implement its state airport system plan, after September 30, 1977, all applications to an agency of the United States for funds to improve or develop an airport not regularly served by an air carrier operating under a certificate of public convenience and necessity issued by the Civil Aeronautics Board or any successor agency of the United States government or owned and operated by the United States government shall be submitted to the department for review and comment prior to being submitted to the federal agency. No such application shall be submitted to the federal agency without first having been reviewed and commented on by the department. The department shall act on each application within 90 days after the receipt of the application. Applications submitted to the Federal Aviation Agency prior to September 30, 1977, shall not be subject to the provisions of this Code section.

(b) The department is authorized, when requested by the owner or operator of any airport for which federal funds are or will be sought for the improvement or development of the airport, to provide such assistance to the owner or operator of the airport as may be necessary to prepare the application for such funds and to complete the project for which such funds are requested.

(c) In order to effectuate and enforce this Code section, the department is authorized to promulgate necessary rules and regulations and to prescribe conditions and procedures in order to assure compliance in carrying out the purposes of this Code section.

(d) Funds appropriated to the department pursuant to Article III, Section IX, Paragraph VI(b) of the Constitution of Georgia may not be utilized for any of the purposes set out in this Code section. (Code 1933, § 95A-1306, enacted by Ga. L. 1977, p. 868, § 1; Ga. L. 1983, p. 3, § 56.)

Cross references. — Powers of local governments as to air facilities, T. 6, C. 3.

RESEARCH REFERENCES

<p>ALR. — Power to establish or maintain public airport, or to create separate public airport authority, 161 ALR 733.</p>	<p>Airport operations or flight of aircraft as nuisance, 79 ALR3d 253.</p>
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32-9-8. Licensing airports.

(a) As used in this Code section, the term:

(1) "Aircraft" means any machine, whether heavier or lighter than air, used or designed for navigation of or flight in the air.

(2) "Airport" means any area of land, water, or mechanical structure which is used for the landing and takeoff of aircraft and is open to the general public for such use without prior permission or restrictions and includes any appurtenant structures and areas which are used or intended to be used for airport buildings, other airport facilities, rights of way, or easements, provided that the term "airport" shall not include the following facilities used as airports:

(A) Facilities owned or operated by the United States government or an agency thereof;

(B) Privately owned facilities not open to the general public when such airports do not interfere with the safe and efficient use of air space of an airport for which a license or an airport operating certificate issued under Part 139 of the regulations of the Federal Aviation Administration or any successor regulation has been granted;

(C) Facilities being operated pursuant to a current airport operating certificate issued by the Federal Aviation Administration or any successor agency of the United States government; and

(D) Any facility served by a scheduled air carrier operating under a certificate of public convenience and necessity issued by the Civil Aeronautics Board or any successor agency of the United States government.

(3) "Person" means an individual, firm, corporation, partnership, company, association, joint-stock association, municipality, county, or state agency, authority, or political subdivision and includes any trustee, receiver, assignee, or other similar representative thereof.

(b) It is declared that the operation of airports used by the public for general aviation purposes but which are operated without regulation as to minimum and uniform safety requirements endangers the lives and property of persons operating aircraft at these facilities, the passengers of aircraft operated by such persons, and the occupants of lands in the vicinity of such facilities. For the purpose of establishing and improving a system of safer airports and to foster safer operating conditions at these airports, the department is authorized and directed to provide for the licensing of airports. The department may charge a license fee of \$100.00 per runway, up to a maximum of \$400.00, for each original license and each renewal thereof. All licenses shall be renewed biennially. In promulgating the rules and regulations establishing minimum standards, the department shall consult with the Georgia Aviation Trades Association.

(c) The department shall issue a permit or renewal thereof to any owner of an airport who applies for a permit or renewal thereof, if, upon

investigation, the department determines that the airport meets minimum standards, prescribed by the department in its rules and regulations, in the areas of geometric layout, navigational aids, lighting, approach surfaces, landing surfaces, runway markings, and separation between airport sites, provided that no permit shall be denied the owner or operator of an airport in existence on July 1, 1978, because of the failure to meet minimum standards prescribed with regard to geometric layout and separation between airport sites.

(d) Within nine months after July 1, 1978, the department shall promulgate and publish reasonable rules and regulations establishing the minimum standards provided for in subsection (c) of this Code section, the procedure for obtaining, renewing, and revoking a license, and such other procedures and conditions as are reasonable and necessary to carry out this Code section.

(e) Within six months after the effective date of the rules and regulations adopted by the department, the owner of each airport in this state shall apply, on forms prescribed by the department, for a license to operate the airport. Within 60 days after the receipt of a properly filled out application for a license, with appropriate fee, the department shall act upon the application.

(f) All applications for renewal of a license shall be made to the department no later than 60 days prior to the expiration of the existing license.

(g) Applications for a license or renewal thereof may be denied, or a license may be revoked, by the department, after notice and opportunity for hearing to the licensee, when the department shall reasonably determine:

(1) That the licensee has failed to comply with the conditions of the license or renewal thereof;

(2) That the licensee has failed to comply with the minimum standards prescribed by the department pursuant to this Code section; or

(3) That because of changed physical or legal conditions or circumstances the airport has become either unsafe or unusable for the purposes for which the license or renewal was issued.

(h) The decision of the department to deny or revoke any license or renewal thereof shall be subject to review in the manner prescribed for the review of contested cases as prescribed by Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

(i) After September 30, 1979, it shall be unlawful for any person to own or operate an airport without a valid license as required by this

Code section. Any person owning or operating an airport without a valid license as prescribed by this Code section shall be subject to a civil penalty in an amount not to exceed \$100.00, to be imposed by the commissioner. (Code 1933, § 95A-1307, enacted by Ga. L. 1978, p. 1932, § 1; Ga. L. 2010, p. 9, § 1-62/HB 1055.)

The 2010 amendment, effective May 12, 2010, substituted “\$100.00 per runway, up to a maximum of \$400.00,” for “\$10.00” in the third sentence of subsection (b).

Cross references. — Powers of local governments as to air facilities, T. 6, C. 3.

Administrative rules and regulations. — Rules and regulations for licensing of certain open-to-the-public airports, Official Compilation of the Rules and Regulations of the State of Georgia, State Department of Transportation, Chapter 672-9.

32-9-9. Creation of transit authority by special legislation; authority’s attributes and powers.

(a) This Code section shall be known and may be cited as the “Transit Authority Act.”

(b) It is declared to be the policy of the state to foster and to assure the development of mass rapid transit systems within the metropolitan areas of this state.

(c) As used in this Code section, the term “metropolitan area” means (1) the area of any city within the state whose population, as determined by the federal census of 1950 or any later federal census, shall have exceeded 43,617 persons (such a city being hereinafter referred to as a central city), together with (2) the area suburban to such a central city as each such suburban area shall be more specifically delimited by special Act of the General Assembly.

(d) The General Assembly may, by special Act, create a transit authority charged with the duty of acquiring, constructing, owning, operating, and maintaining a mass rapid transit system within a metropolitan area as defined in this Code section. The General Assembly, in the special Act creating such an authority, shall delimit the territory to be served by such authority; and the General Assembly may, in such special Act, provide that the property of and the securities issued by such authority shall be exempt from taxation and that such authority may, in addition to the rights, powers, privileges, exemptions, and immunities which are customarily possessed by public corporations, have such other and further rights, powers, privileges, exemptions, and immunities as the General Assembly shall deem appropriate to the accomplishment of its purposes, provided that such authority shall not be empowered to obligate the State of Georgia or any county, municipality, political subdivision, or public body of the state to pay any of its debts; provided, further, that the central city served by such mass rapid transit system and any county or counties whose territory or any

part thereof lies within the territorial limits of such authority, as the same may be delimited in the special Act creating such authority, shall have the right to appoint the members of such authority, or a majority thereof, subject to such qualifications for membership and such apportionment of the right of appointment as the special Act creating such authority may provide. (Ga. L. 1960, p. 1025; Ga. L. 1982, p. 3, § 32; Ga. L. 1996, p. 6, § 32.)

OPINIONS OF THE ATTORNEY GENERAL

Savannah Transit Authority is not a political subdivision. 1983 Op. Att'y Gen. No. U83-1.

RESEARCH REFERENCES

ALR. — Powers of federal and state governments respectively as regards railroad stations, 37 ALR 1372.

Validity of statute or ordinance relating

to taxicab or bus service as against objection based upon monopolistic tendency or effect, 159 ALR 821.

32-9-10. Implementation of federal Intermodal Surface Transportation Efficiency Act of 1991.

(a) The purpose of this Code section is to implement Section 3029 of Public Law 102-240, the federal Intermodal Surface Transportation Efficiency Act of 1991, referred to in this Code section as the act.

(b) For purposes of this Code section, the term "system" means a public transportation system having vehicles operated on a fixed guideway on steel rails, the steel of the wheels of such vehicles coming directly into contact with such rails, but excluding such systems that are subject to regulation by the Federal Railroad Administration. In addition, a "system" shall include all other public transportation systems that, under regulations issued pursuant to subsection (e) of the act, are subject to the act.

(c) The department is designated as the agency of this state responsible for implementation of the act.

(d) Each system operating in this state shall adopt and carry out a safety program plan that provides for the following:

(1) The plan shall establish safety requirements with respect to the design, manufacture, and construction of the equipment, structures, and fixtures of the system; the maintenance of equipment, structures, and fixtures; operating methods and procedures and the training of personnel; compliance with federal, state, and local laws and regulations applicable to the safety of persons and property;

protection from fire and other casualties; and the security of passengers and employees and of property;

(2) The plan shall provide for measures reasonably adequate to implement the requirements established pursuant to paragraph (1) of this subsection; and

(3) The plan shall establish lines of authority, levels of responsibility and accountability, and methods of documentation adequate to ensure that it is implemented.

(e) The department shall have the following powers and duties:

(1) It shall review the safety program plan of each system and all revisions and amendments thereof and if it finds that the plan conforms to subsection (d) of this Code section shall approve it;

(2) It shall monitor the implementation of each system's plan;

(3) It shall have the power to require any system to revise or amend its safety program plan as may be necessary in order to comply with any regulations issued pursuant to subsection (e) of the act and any amendments or revisions thereof; and

(4) It shall investigate hazardous conditions and accidents on each system and, as appropriate, require that hazardous conditions be corrected or eliminated.

(f) If any system fails to comply with an order of the department to correct or to eliminate a hazardous condition, the department may apply for an order requiring such system to show cause why it should not do so. Such application shall be made to the superior court of the most populous county in which such system operates, as such population is determined according to the United States decennial census of 1990 or any future such census. If at the hearing upon such an order to show cause the court finds that the condition that is the subject of the order in fact creates an unreasonable risk to the safety of persons, property, or both, the court may order the system to comply with the department's order or to take such other corrective action as the court finds appropriate. (Code 1981, § 32-9-10, enacted by Ga. L. 1993, p. 1362, § 1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1996, a comma was deleted following "Code section" near the end of paragraph (e)(1).

U.S. Code. — The federal Intermodal Surface Transportation Efficiency Act of 1991, referred to in this Code section, is codified at 49 U.S.C. § 5501.

32-9-11. Transit services with local governments.

(a) As used in this Code section, the term:

(1) "Local government" means any county, municipality, or political subdivision of this state, or any combination thereof.

(2) "Transit agency" means any public agency, public corporation, or public authority existing under the laws of this state that is authorized by any general, special, or local law to provide any type of transit services within any area of this state but shall not include the Department of Transportation, the Georgia Regional Transportation Authority, or the Georgia Rail Passenger Authority.

(3) "Transit facilities" means everything necessary and appropriate for the conveyance and convenience of passengers who utilize transit services.

(4) "Transit services" means all modes of transportation serving the general public which are appropriate to transport people and their personal effects by highway or other ground conveyance but does not include rail conveyance.

(b) Any transit agency may, by contract with any local government for any period not exceeding 50 years, provide transit services or transit facilities for, to, or within that local government or between that local government and any area in which such transit agency provides transit services or transit facilities, except that if such services or facilities are to be funded wholly or partially by fees, assessments, or taxes levied and collected within a special district created pursuant to Article IX, Section II, Paragraph VI of the Constitution, such contract may only become effective if it is approved by a majority of the qualified voters voting in such local government in a special election which shall be called and conducted for that purpose by the election superintendent of such local government. Any services provided by a transit agency pursuant to a contract authorized by this subsection shall be conditioned upon such services being included in a plan for transit services adopted or approved by the governing authority of the county and by the governing authorities of any municipalities within which transit services are to be provided as provided in the plan.

(c) The purpose of this Code section is to facilitate the exercise of the power to provide public transportation services conferred by Article IX, Section II, Paragraph III of the Constitution. This Code section does not repeal any other law conferring the power to provide public transportation services or prescribing the manner in which such power is to be exercised. This Code section does not restrict the power of the Department of Transportation, the Georgia Regional Transportation Authority, or the Georgia Rail Passenger Authority to contract with any local government to provide transit services or transit facilities, including but not limited to rail transit services and facilities, pursuant to Article IX, Section III, Paragraph I of the Constitution. (Code 1981, § 32-9-11, enacted by Ga. L. 1998, p. 888, § 1; Ga. L. 1999, p. 112, § 4.)

Law reviews. — For article, “Standards for Smart Growth: Searching for Limits on Agency Discretion and the Georgia Regional Transportation Authority,” see 36 Ga. L. Rev. 247 (2001).

For note on 1999 amendment to this Code section, see 16 Ga. St. U.L. Rev. 233 (1999).

32-9-12. Pilot program for funding streetcar projects.

The department will form a pilot program that will provide a state level flow through point for any available federal funding or other forms of financial and development sources and assistance for local, regional, and public-private streetcar projects. Any funding through bonds for such pilot and grant program shall be administered by the State Road and Tollway Authority. (Code 1981, § 32-9-12, enacted by Ga. L. 2005, p. 60, § 32/HB 95.)

32-9-13. Suspension of restrictions on use of annual proceeds from local sales and use taxes by public transit authorities.

Provisions in all laws, whether general or local, including but not limited to the Metropolitan Atlanta Rapid Transit Authority Act of 1965 approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended, that set forth restrictions on the use by public transit authorities of annual proceeds from local sales and use taxes shall be suspended for the period beginning on June 2, 2010, and continuing for three years. The greater discretion over such funds shall not abrogate the obligation of the public transit authority to comply with federal and state safety regulations and guidelines. Newly unrestricted funds shall be utilized, subject to total funding, to maintain the level of service for the transit system as it existed on January 1, 2010. Furthermore, except as had been previously contracted to by the public transit authority prior to January 1, 2010, no funds newly unrestricted during this suspended period shall be used by a public transit authority to benefit any person or other entity for any of the following: annual cost-of-living or merit based salary raises or increases in hourly wages; increased overtime due to such wage increases; payment of bonuses; or to increase the level of benefits of any kind. (Code 1981, § 32-9-13, enacted by Ga. L. 2010, p. 778, § 3/HB 277.)

Effective date. — This Code section became effective June 2, 2010.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2010, “beginning on June 2, 2010,” was substituted for “beginning on the effective date of this Code section” near the end of the first sentence.

Editor’s notes. — Ga. L. 2010, p. 778, § 1/HB 277, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘Transportation Investment Act of 2010.’”

32-9-14. Board of directors of Metropolitan Atlanta Rapid Transit Authority.

(a) Any provisions to the contrary in the Metropolitan Atlanta Rapid Transit Authority Act of 1965, approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended, notwithstanding, the terms of all members of the board of directors of the Metropolitan Atlanta Rapid Transit Authority shall terminate on December 31, 2010, and the board shall be reconstituted according to the provisions of this Code section.

(b) Effective January 1, 2011, the board of directors of the authority shall be composed of 11 voting members and one nonvoting member. Of the voting members: three members shall be residents of the City of Atlanta to be nominated by the mayor and elected by the city council; four members shall be residents of DeKalb County to be appointed by the DeKalb County Board of Commissioners and at least one of such appointees shall be a resident of that portion of DeKalb County lying south of the southernmost corporate boundaries of the City of Decatur and at least one of such appointees shall be a resident of that portion of DeKalb County lying north of the southernmost corporate boundaries of the City of Decatur; three members shall be residents of Fulton County to be appointed by the local governing body thereof, and one of such appointees shall be a resident of that portion of Fulton County lying south of the corporate limits of the City of Atlanta and two of such appointees shall be residents of that portion of Fulton County lying north of the corporate limits of the City of Atlanta. The commissioner of transportation shall be a voting member of the board and the executive director of the Georgia Regional Transportation Authority shall be a nonvoting member of the board. The governing body that appoints a member shall appoint successors thereto for terms of office of four years in the same manner that such governing body makes its other appointments to the board.

(c) All appointments shall be for terms of four years except that a vacancy caused otherwise than by expiration of term shall be filled for the unexpired portion thereof by the local governing body that made the original appointment to the vacant position, or its successor in office. A member of the board may be appointed to succeed himself or herself for one four-year term. Appointments to fill expiring terms shall be made by the local governing body prior to the expiration of the term, but such appointments shall not be made more than 30 days prior to the expiration of the term. Members appointed to the board shall serve for the terms of office specified in this Code section and until their respective successors are appointed and qualified.

(d) The local governing bodies of Clayton, Cobb, and Gwinnett Counties may, any other provision of this Code section to the contrary

notwithstanding, negotiate, enter into, and submit to the qualified voters of their respective counties the question of approval of a rapid transit contract between the county submitting the question and the authority. The local governing bodies of these counties shall be authorized to execute such rapid transit contracts prior to the holding of a referendum provided for in Section 24 of the Metropolitan Atlanta Rapid Transit Authority Act of 1965, approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended; provided, however, that any such rapid transit contract shall not become valid and binding unless the same is approved by a majority of those voting in said referendum, which approval shall also be deemed approval of further participation in the authority. Upon approval of such rapid transit contract, the county entering into such contract shall be a participant in the authority, and its rights and responsibilities shall, insofar as possible, be the same as those belonging to Fulton and DeKalb Counties, and the local governing body of the county may then appoint two residents of the county to the board of directors of the authority, to serve a term ending on the thirty-first day of December in the fourth full year after the year in which the referendum approving said rapid transit contract was held, in which event the board of directors of the authority shall, be composed also of such additional members.

(e) No person shall be appointed as a member of the board who holds any other public office or public employment except an office in the reserves of the armed forces of the United States or the National Guard; any member who accepts or enters upon any other public office or public employment shall be disqualified thereby to serve as a member.

(f) A local governing body may remove any member of the board appointed by it for cause. No member shall be thus removed unless the member has been given a copy of the allegations against him or her and an opportunity to be publicly heard in his or her own defense in person with or by counsel with at least ten days' written notice to the member. A member thus removed from office shall have the right to a judicial review of the member's removal by an appeal to the superior court of the county of the local governing body which appointed the member, but only on the ground of error of law or abuse of discretion. In case of abandonment of the member's office, conviction of a crime involving moral turpitude or a plea of nolo contendere thereto, removal from office, or disqualification under subsection (e) of this Code section, the office of a member shall be vacant upon the declaration of the board. A member shall be deemed to have abandoned the member's office upon failure to attend any regular or special meeting of the board for a period of four months without excuse approved by a resolution of the board, or upon removal of the member's residence from the territory of the local governing body that appointed the member.

(g) Each appointed member of the board, except the chairperson, shall be paid by the authority a per diem allowance, in an amount equal

to that provided by Code Section 45-7-21 for each day on which that member attends an official meeting of the board, of any committee of the board, or of the authority's Pension Committee, Board of Ethics, or Arts Council; provided, however, that said per diem allowance shall not be paid to any such member for more than 130 days in any one calendar year. If the chairperson of the board is an appointed member of the board, the chairperson shall be paid by the authority a per diem allowance in the same amount for each day in which the chairperson engages in official business of the authority, including but not limited to attendance of any of the aforesaid meetings. A member of the board shall also be reimbursed for actual expenses incurred by that member in the performance of that member's duties as authorized by the board. A board member shall not be allowed employee benefits.

(h) The board shall elect one of its members as chairperson and another as vice chairperson for terms to expire on December 31 of each year to preside at meetings and perform such other duties as the board may prescribe. The presiding officer of the board may continue to vote as any other member, notwithstanding the member's duties as presiding officer, if the member so desires. The board shall also elect from its membership a secretary and a treasurer who shall serve terms expiring on December 31 of each year. A member of the board may hold only one office on the board at any one time.

(i) The board shall hold at least one meeting each month. The secretary of the board shall give written notice to each member of the board at least two days prior to any called meeting that may be scheduled, and said secretary shall be informed of the call of such meeting sufficiently in advance so as to provide for the giving of notice as above. A majority of the total membership of the board, as it may exist at the time, shall constitute a quorum. On any question presented, the number of members present shall be recorded. By affirmative vote of a majority of the members present, the board may exercise all the powers and perform all the duties of the board, except as otherwise hereinafter provided or as limited by its bylaws, and no vacancy on the original membership of the board, or thereafter, shall impair the power of the board to act. All meetings of the board, its executive committee, or any committee appointed by the board shall be subject to Chapter 14 of Title 50.

(j) Notwithstanding any other provisions of this Code section, the following actions by the board shall require the affirmative vote of one more than a majority of the total membership of the board as it may exist at the time:

(1) The issuance and sale of revenue bonds or equipment trust certificates;

(2) The purchase or lease of any privately owned system of transportation of passengers for hire in its entirety, or any substan-

tial part thereof. Prior to the purchase or lease of any such privately owned system a public hearing pertaining thereto shall have been held and notice of such public hearing shall have been advertised; provided, however, that no sum shall be paid for such privately owned system of transportation in excess of the fair market value thereof determined by a minimum of two appraisers qualified to appraise privately owned systems of transportation and approved by a majority of the local governments participating in the financing of such purchase;

(3) The award of any contract involving \$100,000.00 or more for construction, alterations, supplies, equipment, repairs, maintenance, or services other than professional services or for the purchase, sale, or lease of any property. The board by appropriate resolution may delegate to the general manager the general or specific authority to enter into contracts involving less than \$100,000.00;

(4) The grant of any concession; and

(5) The award of any contract for the management of any authority owned property or facility.

(k) The board shall appoint and employ, as needed, a general manager and a general counsel, none of whom may be members of the board or a relative of a member of the board, and delegate to them such authority as it may deem appropriate. It may make such bylaws or rules and regulations as it may deem appropriate for its own government, not inconsistent with this Code section, including the establishment of an executive committee to exercise such authority as its bylaws may prescribe.

(l) The treasurer of the authority and such other members of the board and such other officers and employees of the authority as the board may determine shall execute corporate surety bonds, conditioned upon the faithful performance of their respective duties. A blanket form of surety bond may be used for this purpose. Neither the obligation of the principal or the surety shall extend to any loss sustained by the insolvency, failure, or closing of any depository which has been approved as a depository for public funds.

(m)(1) In addition to the requirements of subsection (i) of this Code section, each member of the board shall hold a meeting once each 12 months with the local governing body that appointed such member. The secretary of the board shall give written notice to each member of the board, to each local governing body, and to the governing authority of each municipality in the county in which there is an existing or proposed rail line at least two days prior to any meeting that may be scheduled, and said secretary shall be informed of the call of such meeting sufficiently in advance so as to provide for giving

such notice. These meetings shall be for the purpose of reporting to the local governing bodies on the operations of the authority and on the activities of the board and making such information available to the general public. No activity that requires action by the board shall be initiated or undertaken at any meeting conducted under this subsection.

(2) The board shall submit once each three months a written report on the operations of the authority and on the activities of the board to each local governing body that appoints a member of the board. (Code 1981, § 32-9-14, enacted by Ga. L. 2010, p. 778, § 3/HB 277; Ga. L. 2012, p. 775, § 32/HB 942.)

Effective date. — This Code section became effective June 2, 2010.

The 2012 amendment, effective May 1, 2012, part of an Act to revise, modernize, and correct the Code, revised punctuation in the second sentence of subsection (g).

Editor's notes. — Ga. L. 2010, p. 778, § 1/HB 277, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Transportation Investment Act of 2010.'"

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PART 3

TRANSPORTATION INFRASTRUCTURE BANK

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RESEARCH REFERENCES

ALR. — State or local governmental unit's liability for injury to private highway construction worker based on its own negligence, 29 ALR4th 1188.

ARTICLE 1

GEORGIA HIGHWAY AUTHORITY

PART 1

GENERAL PROVISIONS

32-10-1. Definitions.

As used in this article, the term:

(1) "Approach" means not more than three miles of the traffic artery on either end of the bridge and within that limit shall mean so

much of the traffic arteries on either end of the bridge as shall be required to develop the maximum traffic capacity of the bridge, including necessary grading, paving, drainage structures or facilities, and other construction necessary to the approach.

(2) "Authority" means the public corporation created by the "Georgia Highway Authority Act," Ga. L. 1967, p. 385, as amended by Ga. L. 1971, p. 385, and by Ga. L. 1972, p. 826, which 1967 Act merged the public corporation known as the Georgia Rural Roads Authority created by the "Georgia Rural Roads Authority Act," Ga. L. 1955, p. 124, as amended, with the Georgia State Highway Authority, created by the "Georgia State Highway Authority Act," Ga. L. 1953, Jan.-Feb. Sess., p. 626, as amended particularly by Ga. L. 1961, p. 3, and which 1967 Act provided that all property, assets, choses in action, or other things of value of both of the constituent public corporations shall be vested in and be the property of the Georgia Highway Authority (the continuing and surviving public corporation); all the rights, powers, and duties, including their perpetual existence, previously legally granted to both constituent public corporations, shall be vested in the Georgia Highway Authority, subject, however, to all debts, obligations, liabilities, and duties incurred by the two constituent public corporations; the purpose and intention of such merger was that the Georgia Highway Authority as the successor and continuing corporation would be for the continuation of all the purposes of both constituent public corporations and would be vested with the rights, powers, duties, and obligations of both constituent public corporations, together with the additional powers and rights granted by the aforesaid "Georgia Highway Authority Act" of 1967.

(3) "Board" means the State Transportation Board or the commissioner of transportation acting as the chief executive officer of the Department of Transportation; and, whenever any action is required to be taken, any power is permitted to be exercised, any approval is to be granted, or any contract is to be executed by the State Transportation Board, pursuant to any provision of this article, the same may be taken, exercised, granted, or executed by the commissioner to the extent permitted by law.

(4) "Bonds and revenue bonds" means any bonds issued by the authority or either of the constituent public corporations, whether issued under this article or otherwise, including refunding bonds.

(5) "Bridge" means a structure, including the approaches thereto, erected in order:

(A) To afford unrestricted vehicular passage over obstructions in any public road, including but not limited to rivers, streams, ponds, lakes, bays, ravines, gullies, railroads, public highways, and canals; or

(B) To afford unrestricted vehicular passage under or over existing railroads and public roads.

(6) "Cost of project or projects" means the cost of construction; the cost of all lands, properties, franchises, and rights in property; the cost of all machinery and equipment necessary for the operation of a project; financing charges; interest prior to and during construction; cost of engineering, plans and specifications, surveys, and supervision; legal expenses; expenses necessary or incident to determining the feasibility or practicability of the project; administrative expenses; fiscal expense; such other expense as may be necessary or incident to the financing authorized by this article; the expense of construction or any action permitted by this article with respect to a particular project and the placing of the same in operation; and any other expense authorized by this article to be incurred by the authority with respect to any action with regard to a particular project or projects. Any obligation or expense incurred for any of the foregoing purposes shall be regarded as a cost of the project and may be paid or reimbursed as such out of the proceeds of bonds issued under this article for such project or group of projects.

(7) "County road" means any public road or portion thereof, not located wholly within the boundaries of an incorporated municipality and not now, or as of the particular time of inquiry in the future, part of a state road or urban road as defined in paragraphs (12) and (15), respectively, of this Code section. The term shall include not only such roads as come within this definition on July 1, 1973, but also such roads, as defined in this Code section, which may from time to time be planned, laid out, and constructed by the authority pursuant to this article. The fact that a road owned by the authority and leased to the state may, as provided by this article, be declared part of the state highway system shall not destroy its identity as a county road for the purposes of this article, provided that nothing in the definition of "county road" shall in any manner alter the legal effect of said term which is intended to be synonymous with "rural road" as used in the "Georgia Highway Authority Act," Ga. L. 1967, p. 385, as amended.

(8) "Governing authority of a county" means the commissioner, board of commissioners, commission, or other person or body of persons at the time entrusted by law with the administration of the fiscal affairs of any county.

(9) "Governing authority of any incorporated municipality" means the mayor, board of aldermen, city council, board, council, commission, or other person or body of persons at the time entrusted by law with the administration of the fiscal affairs of any incorporated municipality.

(10) "Project" means:

(A) A continuous length or stretch of state road, including bridges thereon, as to which the authority has undertaken or agreed to undertake any action permitted by the terms of this article or as to which any such action has been completed by the authority;

(B) A continuous length or stretch of county road, including bridges thereon, as to which the authority has undertaken or agreed to undertake any action permitted by the terms of this article or as to which any such action has been completed by the authority;

(C) A continuous length or stretch of urban road, including bridges thereon, as to which the authority has undertaken or agreed to undertake any action permitted by the terms of this article or as to which any such action has been completed by the authority;

(D) One or more bridges, as defined in paragraph (5) of this Code section, together with the approaches thereto, as defined in paragraph (1) of this Code section; and

(E) A project undertaken pursuant to a public-private initiative as authorized pursuant to Code Section 32-2-78.

(11) "Self-liquidating" means a project or group of projects whose revenues, rents, and earnings derived by the authority therefrom will be sufficient to pay, in the judgment of the authority, the principal of and interest on bonds which may be issued for the cost of such project or group of projects and to pay the cost of maintaining, repairing, and operating the projects or combination of projects and other lawful expenses of the authority.

(12) "State road" means any public road or portion thereof which is part of the state highway system or The Dwight D. Eisenhower System of Interstate and Defense Highways.

(13) "Urban county" means any county with a population of more than 50,000 according to the most recent official United States census.

(14) "Urban incorporated municipality" means a municipal corporation incorporated and chartered pursuant to an Act of the General Assembly and which has a population of 5,000 or more according to the most recent official United States census.

(15) "Urban road" means any public road or portion thereof located:

(A) Anywhere wholly within the boundaries of an urban county;
or

(B) Wholly or partly within an urban incorporated municipality within the boundaries of a county with a population under 50,000 according to the most recent official United States census and extending no more than two miles outside of such urban incorporated municipality.

The term shall include not only such roads as come within this definition on or after July 1, 1973, but also such roads as defined in this Code section which may from time to time be planned, laid out, and constructed by the authority pursuant to this article. The fact that a road owned by the authority and leased to the state may be declared part of the state highway system, as provided by this article, shall not destroy its identity as an urban road for the purposes of this article. (Ga. L. 1953, Jan.-Feb. Sess., p. 626, § 3; Ga. L. 1955, p. 124, § 2; Ga. L. 1961, p. 3, § 3; Ga. L. 1967, p. 385, § 3; Ga. L. 1971, p. 385, § 1; Ga. L. 1972, p. 826, § 1; Code 1933, § 95A-1201, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1982, p. 3, § 32; Ga. L. 1985, p. 149, § 32; Ga. L. 2000, p. 136, § 32; Ga. L. 2005, p. 601, § 11/SB 160; Ga. L. 2005, p. 902, § 4/SB 270.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1991, commas were inserted following “(15)” and “respectively” in the first sentence of paragraph (7).

32-10-2. Continuation of Georgia Highway Authority; preservation of authority's powers; protection of rights of bondholders generally.

(a) The Georgia Highway Authority shall continue to be a body corporate and politic and an instrumentality and public corporation of this state known as the “Georgia Highway Authority.” It shall continue to have perpetual existence. In this name it may contract and be contracted with, sue and be sued, implead and be impleaded, and complain and defend in all courts subject to the limitations of Code Section 32-10-50.

(b) Except as provided in this article, the powers granted by law prior to July 1, 1973, to the Georgia Highway Authority to carry out the purpose for which it was originally created shall not be impaired or diminished. Furthermore, no provision of this article is intended to diminish or impair, nor shall any provision be construed as diminishing or impairing, the rights of the holders of any bonds issued by the Georgia Rural Roads Authority or the Georgia Highway Authority or of the holders of any bonds issued by the Georgia Highway Authority outstanding before July 1, 1973; and should it be determined that any provision of this article does diminish or impair any such right in any manner, such provision is declared to be ineffective to that extent but shall be effective for all other purposes. (Ga. L. 1953, Jan.-Feb. Sess., p.

626, § 2; Ga. L. 1959, p. 11, § 2; Ga. L. 1961, p. 3, § 2; Ga. L. 1967, p. 385, § 2; Code 1933, § 95A-1202, enacted by Ga. L. 1973, p. 947, § 1.)

32-10-3. Members; compensation; officers; quorum; record of proceedings.

(a) The members of the Georgia Highway Authority shall be ex officio the Governor, the commissioner of transportation, and the director of the Office of Planning and Budget; and membership on the authority shall be a separate and distinct duty for which they shall receive no additional compensation. All members of the authority shall be entitled to all actual expenses necessarily incurred while in the performance of their duties on behalf of the authority.

(b) The authority shall elect one of its members as chairman. It shall also elect a secretary and a treasurer, who need not necessarily be members of the authority. The authority may make such bylaws for its government as is deemed necessary but it is under no duty to do so. A majority of the members of the authority shall constitute a quorum necessary for the transaction of business, and a majority vote of those present at any meeting at which there is a quorum shall be sufficient to do and perform any action permitted to the authority by this article.

(c) No vacancy on the authority shall impair the right of the quorum to transact any and all business as stated in this Code section. Members of the authority shall be accountable as trustees. They shall cause to be kept adequate books and records of all transactions of the authority, including books of income and disbursements of every nature. The books and records shall be inspected and audited by the state auditor at least once a year. (Ga. L. 1953, Jan.-Feb. Sess., p. 626, § 2; Ga. L. 1955, p. 124, § 4; Ga. L. 1959, p. 13, § 2; Ga. L. 1961, p. 3, § 2; Ga. L. 1963, p. 284, § 1; Ga. L. 1967, p. 385, § 2; Code 1933, § 95A-1203, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1982, p. 3, § 32.)

32-10-4. Powers of authority generally.

The authority shall have, in addition to any other powers conferred in this article, the following powers:

- (1) To have a seal and alter the same at its pleasure;
- (2) To acquire by purchase, exchange, lease, or otherwise and to hold, lease, and dispose of, in any manner, real and personal property of every kind and character for its corporate purposes;
- (3) To appoint such additional officers, who need not be members of the authority, as the authority deems advisable; to employ such experts, agents, and employees as may be in its judgment necessary

to carry on properly the business of the authority; to fix the compensation for such officers, experts, agents, and employees and to promote and discharge same; provided, however, that the total compensation paid such persons shall not exceed the sum of \$100,000.00 per year;

(4) To make such contracts and agreements as the legitimate and necessary purposes of this article shall require, to execute and perform lease contracts for projects as permitted by this article, and to make all other contracts and agreements as may be necessary to the proper performance of any action permitted by this article;

(5) To build, rebuild, relocate, construct, reconstruct, surface, resurface, lay out, grade, repair, improve, widen, straighten, operate, own, maintain, lease, and manage projects located on property conveyed to the authority as authorized in Code Section 32-10-5, and to pay the cost in whole or in part of any such action or actions from the proceeds of bonds;

(6) To borrow money for any of its corporate purposes and to issue bonds for such purposes as provided in Code Section 32-10-30;

(7) To exercise any power granted to private corporations not in conflict with the Constitution and laws of Georgia nor with other provisions of this article;

(8) By or through its agents or employees, to enter upon any lands, waters, and premises in the state for the purpose of making surveys, soundings, drillings, and examinations as the authority may deem necessary or convenient for the purposes of this article; and such entry shall not be deemed a trespass. The authority shall, however, make reimbursement for any actual damage resulting from such activities;

(9) To make reasonable regulations for the installation, construction, maintenance, repair, renewal, removal, and relocation of pipes, mains, conduits, cables, wires, poles, towers, tracts, and other equipment and appliances of any public utility in, on, along, over, and under any project;

(10) To do and perform all things necessary or convenient to carry out the powers conferred upon the authority by this article;

(11) To prescribe rules and regulations as approved by the department for the operation of each project constructed under this article, including rules and regulations to ensure maximum use of each such project; and

(12) To incorporate one or more nonprofit corporations as subsidiary corporations of the authority for the purpose of carrying out any

of the powers of the authority and to accomplish any of the purposes of the authority. Any such subsidiary corporation shall be a nonprofit corporation, a body corporate and politic, and an instrumentality and public corporation of the state and shall exercise essential governmental functions. Any subsidiary corporations created pursuant to this power shall be created pursuant to Chapter 3 of Title 14, the "Georgia Nonprofit Corporation Code," and shall be filed with the Secretary of State, who shall be authorized to accept such filings. The commissioner and two individuals appointed by the members of the authority shall constitute the members of and shall serve as directors of any subsidiary corporation, and such appointment shall not constitute a conflict of interest, provided that the provisions of subsection (a) of Code Section 45-10-23 or any other law shall not prevent full-time employees of the authority or the Department of Transportation from serving as members of the governing board of such subsidiary corporation. Upon dissolution of any subsidiary corporation of the authority, any assets shall revert to the authority or to any successor to the authority or, failing such succession, to the state, provided that any toll collection or other tollway operations remain under the authority of the State Road and Tollway Authority. The authority shall not be liable for the debts, obligations, or bonds of any subsidiary corporation or for the actions or omissions to act of any subsidiary corporation unless the authority in writing expressly so consents. (Ga. L. 1953, Jan.-Feb. Sess., p. 626, § 4; Ga. L. 1955, p. 124, § 5; Ga. L. 1961, p. 3, § 4; Ga. L. 1967, p. 385, § 4; Ga. L. 1971, p. 385, § 6; Code 1933, § 95A-1204, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1974, p. 1215, § 4; Ga. L. 2005, p. 902, § 5/SB 270.)

Cross references. — Prohibition against authorizing construction or maintenance of private road, § 32-1-8.

Editor's notes. — Ga. L. 1974, p. 1215, which enacted Code Sections 12-5-41,

32-5-24, and 45-12-170, and amended Code Sections 20-2-553 and 32-10-4, provided that it shall be known and may be cited as the "Planned Growth and Development Act of 1974."

32-10-5. Conveyance of property to authority.

(a) The Governor is authorized and empowered to convey to the authority, on behalf of the state, any real property or interest therein or any rights of way owned by the state, including property or rights of way acquired in the name of the department or board, which is used at the time, or may be used upon completion of any action committed to the authority by this article, as a state road, a county road, or an urban road. The consideration for such conveyance shall be determined by the Governor and expressed in the deed of conveyance; however, such consideration shall be nominal, the benefits flowing to the state and its citizens constituting full and adequate actual consideration.

(b) The governing authority of any political subdivision of this state, which for the purpose of this title is a county or an incorporated municipality of this state, is authorized and empowered on behalf of such political subdivision to convey to the authority any real property or interest therein for any rights of way owned by such political subdivision, which is used at the time or may, upon completion of any action committed to the authority by this article, be used as a county road or an urban road if conveyed by a county or as an urban road if conveyed by an incorporated municipality. The consideration for such conveyance shall be determined by the governing authority of such political subdivision and expressed in the deed of conveyance. Such consideration, however, shall be nominal, the benefits flowing to the political subdivision and its citizens constituting full and adequate actual consideration. However, nothing in this subsection shall prevent the authority from reimbursing a political subdivision, as authorized in Code Section 32-10-6.

(c) The board or its successors and the department are empowered to acquire, in any manner now permitted to them by law, and to expend funds available to them for such acquisition, real property, interests therein, or rights of way which upon acquisition may be conveyed by the Governor as above-provided to the authority. (Ga. L. 1955, p. 124, § 6; Ga. L. 1967, p. 385, § 6; Code 1933, § 95A-1206, enacted by Ga. L. 1973, p. 947, § 1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1991, in subsection (b) “subdivision” was substituted for “subdivisions” in the next-to-last sentence and a comma was inserted following “However” in the last sentence; and, in subsection (c), “above-provided” was substituted for “above provided”.

RESEARCH REFERENCES

ALR. — Power of eminent domain as between state and subdivision or agency thereof, or as between different subdivisions or agencies themselves, 35 ALR3d 1293.

32-10-6. Reimbursement of counties and municipalities for property, interests, and rights of way conveyed to authority.

Notwithstanding any provisions of this article to the contrary, the authority is authorized to reimburse counties or incorporated municipalities, as a part of the construction cost of a project, for any real property or interest therein or any rights of way conveyed to the authority pursuant to this article, when such real property or interest therein or any rights of way are used as an urban road. (Ga. L. 1972, p. 826, § 2; Code 1933, § 95A-1207, enacted by Ga. L. 1973, p. 947, § 1.)

32-10-7. Letting of construction contracts by competitive bids.

All contracts of the authority for the construction of any project authorized by this article shall be let to the reliable bidder submitting the lowest sealed bid upon plans and specifications approved by the department, as set forth in Code Sections 32-2-64 through 32-2-72. However, subject to the restriction on the subletting of negotiated contracts as contained in Code Section 32-2-61, the authority may contract with any county or other political subdivision of the state for the construction of any project situated wholly or partly within such subdivision, upon agreed terms; but the work provided for by such contract shall be at unit prices which shall not exceed the average of the unit prices submitted in the immediately preceding 60 days by competitive bidders for similar work to the department or the authority, whichever may be lower, as determined and averaged by the chief engineer or his or her designated subordinate. (Ga. L. 1955, p. 124, § 9; Ga. L. 1961, p. 3, § 5; Ga. L. 1967, p. 385, § 5; Code 1933, § 95A-1205, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1982, p. 3, § 32; Ga. L. 1994, p. 591, § 9.)

RESEARCH REFERENCES

ALR. — Right in submitting proposal for bids on public work to require bid on unit basis, with reservation to public authorities of right to determine amount or extent of work, 79 ALR 225.

Right or duty of public authorities to require single bid or to let single contract for entire improvement or for two or more separate improvements, 123 ALR 577.

Contract for personal services as within requirement of submission of bids as condition of public contract, 15 ALR3d 733.

Requirement that public contract be awarded on competitive bidding as applicable to contract for public utility, 81 ALR3d 979.

Right of bidder for state or municipal contract to rescind bid on ground that bid was based upon his own mistake or that of his employee, 2 ALR4th 991.

Right of public authorities to reject all bids for public work or contract, 52 ALR4th 186.

32-10-8. Initiation of projects; preliminary expenses; selection of projects.

(a) Action by the authority with respect to any project or combination of projects shall be initiated as follows: The board, after investigation, shall by resolution recommend the undertaking to the authority with respect to a specific project or a group of projects of any action permitted by this article and deemed by the board to be desirable, in the public interest, and consistent with the purposes provided in subsection (b) of this Code section. The authority shall consider such request and may by resolution provide for undertaking and financing of all or any part of such recommended actions but it shall be under no duty to undertake or finance any of them.

(b) The board is authorized to make and to expend any funds available to it for the purpose of making surveys, studies, and estimates in connection with formulating its recommendations to the authority; and it is further authorized to prepare, furnish, and expend its funds for the purpose of preparing all necessary plans and specifications and furnishing all engineering skill and supervision for any project or projects with respect to which the authority has undertaken or contemplates undertaking any action permitted by this article. The department shall keep an accurate record of such expenses which, if not reimbursed or paid for by the authority as permitted in subsection (d) of this Code section, shall be deemed proper and legitimate expenses of the board and department.

(c) The surveys, plans, and specifications for any action taken by the authority with respect to any project shall be prepared by the department, and the engineering and construction supervision shall be performed by the department unless the board specifically authorizes the authority to do so with its own employees and agents. In any event, all such plans and specifications shall be approved by the chief engineer before work is entered upon pursuant to this subsection.

(d) The authority may contract to reimburse the department for surveys, studies, estimates, plans, specifications, furnishing engineering skill and supervision, and for any other services permitted by this article from the proceeds of any issue of revenue bonds secured by the rentals of the project or group of projects with respect to which the services were rendered; and the same shall be considered as part of the cost of the project.

(e) In selecting projects pursuant to this Code section, the board shall locate urban road projects according to a formula which will allocate to each urban incorporated municipality or urban county, as the case may be, a project or projects estimated to cost an amount approximately equal to the percentage of \$100 million which 110 percent of the population of such urban incorporated municipality or which 100 percent of the population of such urban county, as the case may be, bears to the sum of the total population of all urban counties plus 110 percent of the total population of all urban incorporated municipalities except those in urban counties. As used in this subsection, the term "population" means the population figures according to the most recent official United States census. If any urban incorporated municipality or urban county fails to qualify for one or more of its projects, the board shall have full authority to substitute other projects; but such substituted project shall count in the formula allocation and the urban incorporated municipality or urban county which failed to qualify shall have a cumulative credit for the amount of such forfeited project. (Ga. L. 1953, Jan.-Feb. Sess., p. 626, § 7; Ga. L. 1955, p. 124, § 7; Ga. L.

1961, p. 3, § 6; Ga. L. 1967, p. 385, § 7; Ga. L. 1971, p. 385, § 8; Code 1933, § 95A-1208, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1994, p. 591, § 10.)

32-10-9. Leasing of projects.

The authority, as lessor, is authorized to lease any project or group of projects to the state and the department as lessees; and the Governor on behalf of the state and the commissioner on behalf of the department are authorized to execute and enter upon such leases for the use of a project or group of projects by the state, the department, and the general public; and such leases may contain such of the terms and conditions hereinafter set forth in this Code section as may be applicable to the undertaking:

(1) Said leases shall be for a term not in excess of 50 years;

(2) The rental to be paid for the use of the project or projects shall be fixed by the authority and shall be calculated so as to enable the authority:

(A) To pay the principal of and interest on the bonds, the proceeds of which have been or will be spent on the cost of the project or projects thus leased, including premiums, if any;

(B) To comply with any sinking fund requirement contained in the indenture of trust securing such bonds;

(C) To pay the cost of constructing, reconstructing, maintaining, repairing, and operating such project or projects;

(D) To perform fully all of the provisions of the trust indenture securing the bonds to the payment of which such rental is pledged;

(E) To pay the pro rata share of the reasonable and necessary administrative and operating expense of the authority, including any sum or sums that may be owed to the department as a result of expenditure made by the department under this article;

(F) To accumulate any excess income which may be required by the bond purchasers or dictated by the requirements of achieving ready marketability and low interest rates of the bonds;

(G) To pay any expenses in connection with the bond issue or project or group of projects, such as trustees' fees, counsel fees, fiscal fees, and the like;

(3) The rental shall be payable at such intervals as may be agreed upon and set forth in such lease, and any lease may provide for the commencement of rental payments to the authority prior to the completion of the undertaking of the authority with respect to any

project or projects; and it may also provide for payment of rental during such times as the leased project or group of projects may be partially or wholly untenable;

(4) The lease may obligate the lessees to maintain and keep in good repair (including complete reconstruction, if necessary) the leased projects, regardless of the cause of the necessity for such maintenance, repair, or reconstruction. If such provision is included in any lease, the maintenance, repair, upkeep, and reconstruction, if necessary, shall be performed by the department, which is authorized to expend any sums legally available to it in carrying out such obligations. However, as to any project which is a county road, urban road, or state road, as defined in Code Section 32-10-1, which is not part of the state highway system, the duty of maintenance and repair shall rest upon the incorporated municipality within the limits of which lie any part of the project and upon the county for the remaining part of such project lying outside such limits, as in the case of other public roads of the county or of the municipality. Furthermore, if the entire project lies within the limits of the incorporated municipality, such municipality then shall have the duty of maintenance and repair of the entire project; and furthermore, if no part of said project lies within the limits of an incorporated municipality, the county shall have the duty of maintenance and repair of the entire project; and

(5) The lease may obligate the lessees to indemnify and save harmless the authority from any and all injury and damage to persons or property occurring on or by reason of the leased premises and improvements thereon and to undertake at state expense the defense of any actions brought against the authority by reason of injury or damages to persons or property occurring on or by reason of the leased premises; and a lease may contain a similar obligation on the part of the county through which runs a project covered by the lease. (Ga. L. 1953, Jan.-Feb. Sess., p. 626, § 8; Ga. L. 1955, p. 124, § 10; Ga. L. 1961, p. 3, § 7; Ga. L. 1967, p. 385, § 8; Ga. L. 1971, p. 385, § 3; Code 1933, § 95A-1209, enacted by Ga. L. 1973, p. 947, § 1.)

32-10-10. Payment of rentals by lessees; enforcement of covenants and obligations; assignment of rentals by authority.

(a) The rentals contracted to be paid by lessees to the authority under leases entered upon pursuant to this article shall constitute obligations of the state for the payment of which the good faith of the state is pledged. Such rentals shall be paid as provided in the lease contracts from funds appropriated for such purposes by the terms of the

Constitution of Georgia. It shall be the duty of the Governor and the board to see to the punctual payment of all such rentals. In the event of any failure or refusal on the part of lessees punctually to perform any covenant or obligation contained in any lease entered upon pursuant to this article, the authority may enforce performance by any legal or equitable process against lessees; and consent is given for the institution of any such action.

(b) The authority shall be permitted to assign to a trustee or paying agent any rental due it by the lessees, as may be required by the terms of any trust indenture entered into by the authority. (Ga. L. 1955, p. 124, § 13; Ga. L. 1961, p. 3, § 9; Ga. L. 1967, p. 385, § 11; Code 1933, § 95A-1212, enacted by Ga. L. 1973, p. 947, § 1.)

32-10-11. Cessation of rentals; transfer of projects.

When each and all of the bonds, interest coupons, and obligations of every nature whatsoever, for the payment of which the revenues of any given project or projects have been pledged, in whole or in part, either originally or subsequently, either primarily or secondarily, directly or indirectly, or otherwise, have been paid in full, or a sufficient amount for the payment of all such bonds and other obligations and the interest thereon to the maturity thereof shall have been set aside in trust for the benefit of such bondholders or other obligees, such project or projects shall henceforth be maintained, free from any and all rental consideration, by the department, if part of the state highway system; and, if a county road or an urban road, then by the political subdivision which under paragraph (4) of Code Section 32-10-9 had the duty to maintain the project prior to the cessation of rentals, provided that, upon the cessation of rentals upon any given project, the authority may convey by deed all right, title, and interest in and to such project to the department as part of the state highway system; and, if not part of the state highway system, then to the political subdivision having maintenance responsibility for the project under this Code section; and provided, further, that the department shall maintain and keep in repair such free project or projects as are a part of the state highway system. (Ga. L. 1953, Jan.-Feb. Sess., p. 626, § 10; Ga. L. 1955, p. 124, § 11; Ga. L. 1967, p. 385, § 10; Ga. L. 1971, p. 385, § 5; Code 1933, § 95A-1211, enacted by Ga. L. 1973, p. 947, § 1.)

OPINIONS OF THE ATTORNEY GENERAL

Authority may reconvey right of way to governmental body. — Once bonds issued by an authority on a project or projects have been liquidated in accor-

dance with this section, the authority is authorized to reconvey by quitclaim deed the rights of way on the particular project to the governmental body which has

maintenance responsibility for the project. 1973 Op. Att'y Gen. No. 73-119 (see O.C.G.A. § 32-10-11).

32-10-12. Designation of projects as part of county and municipal public road systems and as part of state highway system.

Each county or urban road project leased by the authority to the state and the department, upon completion of the action with respect thereto undertaken by the authority, shall be a part of the system of public roads of the state and of the county or counties or incorporated municipality or municipalities wherein the project is located; but no such project shall become a part of the state highway system until designated as such as provided by law. (Ga. L. 1955, p. 124, § 12; Ga. L. 1967, p. 385, § 9; Ga. L. 1971, p. 385, § 9; Code 1933, § 95A-1210, enacted by Ga. L. 1973, p. 947, § 1.)

32-10-13. Composition of authority's fund; purposes for which fund may be pledged or utilized.

All revenues in excess of all obligations of the authority, of every nature, which are not otherwise pledged or restricted as to disposition and use by the terms of any trust indenture entered into by the authority for the security of bonds issued under this article, together with all receipts and gifts of every kind and nature whatsoever, shall be and become the authority fund. The authority, in its discretion, shall pledge or utilize the authority fund for any one or more of the following purposes:

(1) Pledges to the payment of any bond issue requirements, sinking or reserve funds, as may be provided for under the terms of this article;

(2) Payment of any outstanding unpaid bond obligations or administrative expenses;

(3) The construction of any project requested by the board, the cost of which may amount to a sum less than the accumulated balance of such fund;

(4) The most advantageous obtainable purchase redemption and retirement of the authority's bonds pursuant to privileges accorded to the authority in the various issues of bonds outstanding;

(5) The most advantageous open market purchase of the authority's bonds that it may accomplish; or

(6) Investment in obligations of the United States government or obligations of agencies of the United States government, the payment

of which is guaranteed by the United States government, of guaranteed convertibility or maturity not in excess of two years, provided that funds so invested and income from such investments shall always be available to and ultimately expended for other purposes set forth in this Code section. (Ga. L. 1953, Jan.-Feb. Sess., p. 626, § 12; Ga. L. 1955, p. 124, § 14; Ga. L. 1961, p. 3, § 10; Ga. L. 1967, p. 385, § 12; Code 1933, § 95A-1213, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1991, p. 94, § 32.)

32-10-14. Designation of moneys received pursuant to article as trust funds.

All moneys received pursuant to this article, whether as proceeds from the sale of bonds or as revenues, tolls, and earnings, shall be deemed trust funds to be held and applied solely as provided in this article; and the bondholders paying or entitled to receive the benefit of such funds shall have a lien on all such funds until applied as provided for in any resolution or trust indentures of the authority. (Ga. L. 1953, Jan.-Feb. Sess., p. 626, § 35; Ga. L. 1955, p. 124, § 36; Ga. L. 1967, p. 385, § 35; Code 1933, § 95A-1235, enacted by Ga. L. 1973, p. 947, § 1.)

32-10-15. Effect of article.

This article shall be deemed to provide an additional and alternative method for the doing of the things authorized in this article, shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers now existing. (Ga. L. 1953, Jan.-Feb. Sess., p. 626, § 36; Ga. L. 1955, p. 124, § 37; Ga. L. 1967, p. 385, § 36; Code 1933, § 95A-1236, enacted by Ga. L. 1973, p. 947, § 1.)

32-10-16. Construction of article.

This article, being for the welfare of the state and its inhabitants, shall be liberally construed to effect the purposes of this article. (Ga. L. 1953, Jan.-Feb. Sess., p. 626, § 37; Ga. L. 1955, p. 124, § 38; Ga. L. 1967, p. 385, § 37; Code 1933, § 95A-1237, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1991, p. 94, § 32.)

PART 2

REVENUE BONDS

32-10-30. Power of authority to issue bonds generally; attributes of bonds generally.

The authority shall have the power and is authorized, at one time or from time to time, to provide by resolution for the issuance of negotiable

bonds in a sum not to exceed \$484 million in principal amount outstanding at any one time for the purpose of paying all or any part of the cost of any one or a combination of projects; provided, however, that of such authorized amount not more than \$150 million of bonds may be issued to finance county road projects, not more than \$234 million of bonds may be issued to finance state road projects, and not more than \$100 million of bonds may be issued to finance urban road projects. The bonds of each issue shall be dated, shall bear interest as provided for in Code Section 32-10-31, shall be payable in such manner of payment as to both principal and interest as may be determined by the authority from the special funds provided in this article for such payment, shall mature not later than 30 years from the date of issuance, and may be made redeemable before maturity, at the option of the authority, at such price or prices and under such terms and conditions as may be fixed by the authority in the resolution providing for the issuance of the bonds. For the purpose of this Code section, bonds shall not be considered to be outstanding if there shall have been deposited into the sinking fund created for the payment of such bonds amounts sufficient to pay the same, together with the interest thereon as the bonds mature. (Ga. L. 1953, Jan.-Feb. Sess., p. 626, § 14; Ga. L. 1955, p. 124, § 15; Ga. L. 1961, p. 3, § 11; Ga. L. 1962, p. 91, § 1; Ga. L. 1967, p. 385, § 14; Ga. L. 1971, p. 385, § 7; Ga. L. 1972, p. 826, § 3; Code 1933, § 95A-1214, enacted by Ga. L. 1973, p. 947, § 1.)

Cross references. — Revenue bonds generally, § 36-82-60 et seq.

32-10-31. Sale of bonds by public competitive bidding; determination of sale price and interest rate.

All bonds of the authority shall be sold by public competitive bidding at not less than par plus accrued interest to the date of delivery. However, the authority may obligate itself to deliver any given issue of bonds to the purchasers thereof within any reasonable period of time after the date of sale and may pay as a penalty for delay in such delivery such reasonable sums as may be agreed upon in advance in writing with the purchaser or purchasers of such bonds. All bonds of the authority shall be advertised and offered prior to the fixing of the interest rates thereon, and bids thereon shall be competitive as to the interest rate offered by each bidder, provided that on any issue the authority may make rules limiting the number of divisions into which the bonds of various maturity dates may be divided and limiting the number and percentage spreads of the different interest rates which may be bid to apply to such divisions of the bonds; and provided, further, that the authority may require reasonable security for the performance of the contract of purchase of any successful bidder at any public bidding held. (Ga. L. 1953, Jan.-Feb. Sess., p. 626, § 15; Ga. L.

1955, p. 124, § 16; Ga. L. 1961, p. 3, § 5; Ga. L. 1967, p. 385, § 15; Code 1933, § 95A-1215, enacted by Ga. L. 1973, p. 947, § 1.)

32-10-32. Determining form of bonds; fixing denominations; determination of place of payment; issuance of bonds in coupon or registered form.

The authority shall determine the form of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest thereof, which may be at any bank or trust company inside or outside of the state. The bonds may be issued in coupon or registered form, or both, as the authority may determine; and provision may be made for the registration of any coupon bond as to principal alone and also as to both principal and interest. (Ga. L. 1953, Jan.-Feb. Sess., p. 626, § 16; Ga. L. 1955, p. 124, § 17; Ga. L. 1967, p. 385, § 16; Code 1933, § 95A-1216, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1985, p. 149, § 32.)

32-10-33. Signing bonds; affixing authority's seal to bonds.

In case any officer whose signature shall appear on any bonds or whose facsimile signature shall appear on any coupon shall cease to be such officer before the delivery of such bonds, such signature shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. All such bonds shall be signed by the chairman of the authority and the official seal of the authority shall be affixed thereto and attested by the secretary of the authority, and any coupons attached thereto shall bear the signature or facsimile signature of the chairman of the authority. Any coupon may bear the facsimile signature of such person and any bond may be signed, sealed, and attested on behalf of the authority by such persons as at the actual time of the execution of such bonds shall be duly authorized to hold the proper office although at the date of such bonds such persons may not have been so authorized or shall not have held such office. (Ga. L. 1953, Jan.-Feb. Sess., p. 626, § 17; Ga. L. 1955, p. 124, § 18; Ga. L. 1967, p. 385, § 17; Code 1933, § 95A-1217, enacted by Ga. L. 1973, p. 947, § 1.)

32-10-34. Status of bonds as negotiable instruments; tax exemption for bonds, their transfer, and income therefrom.

All bonds issued under this article shall have and are declared to have all the qualities and incidents of negotiable instruments under the laws of this state. Such bonds, their transfer, and the income therefrom shall be exempt from all taxation within this state. (Ga. L. 1953,

Jan.-Feb. Sess., p. 626, § 18; Ga. L. 1955, p. 124, § 19; Ga. L. 1967, p. 385, § 18; Code 1933, § 95A-1218, enacted by Ga. L. 1973, p. 947, § 1.)

RESEARCH REFERENCES

ALR. — Bond or warrant of governmental subdivision as subject of taxation or exemption, 44 ALR 510.

32-10-35. Utilization of bond proceeds; procedure in cases where proceeds are less than or greater than cost of project or combined projects.

The proceeds of the bonds shall be used solely for the payment of the cost of the project or combined projects and shall be disbursed upon requisition or order of the chairman of the authority or its duly bonded agents under such restrictions, if any, as the resolution authorizing the issuance of the bonds or the trust indenture may provide. If the proceeds of such bonds, by error of calculation, or otherwise, shall be less than the cost of the project or combined projects, unless otherwise provided in the resolution authorizing the issuance of the bonds or in the trust indenture, additional bonds may in like manner be issued to provide the amount of such deficit which, unless otherwise provided in the resolution authorizing the issuance of the bonds or in the trust indenture, shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds first issued for the same purpose. If the proceeds of the bonds of any issue shall exceed the amount required for the purpose for which such bonds were issued, all surplus shall be paid into the sinking fund provided for the payment of principal and interest of such bonds or shall be used for construction of additional projects as the resolution creating such bonds and the trust indenture securing them may provide. (Ga. L. 1953, Jan.-Feb. Sess., p. 626, § 19; Ga. L. 1955, p. 124, § 20; Ga. L. 1961, p. 3, § 12; Ga. L. 1967, p. 385, § 19; Code 1933, § 95A-1219, enacted by Ga. L. 1973, p. 947, § 1.)

32-10-36. Issuance of interim receipts, interim certificates, and temporary bonds.

Prior to the preparation of definitive bonds, the authority, under like restrictions, may issue interim receipts, interim certificates, or temporary bonds with or without coupons exchangeable for definitive bonds upon the issuance of the latter. (Ga. L. 1953, Jan.-Feb. Sess., p. 626, § 20; Ga. L. 1955, p. 124, § 21; Ga. L. 1967, p. 385, § 20; Code 1933, § 95A-1220, enacted by Ga. L. 1973, p. 947, § 1.)

32-10-37. Replacement of lost or mutilated bonds.

The authority may also provide for the replacement of any bond which becomes mutilated or which is destroyed or lost. (Ga. L. 1953, Jan.-Feb. Sess., p. 626, § 21; Ga. L. 1955, p. 124, § 22; Ga. L. 1967, p. 385, § 21; Code 1933, § 95A-1221, enacted by Ga. L. 1973, p. 947, § 1.)

32-10-38. Conditions precedent to taking effect of resolutions for bond issuance; issuance of bonds of a single issue for purpose of paying cost of one or more projects.

Resolutions for the issuance of bonds may be adopted without any other proceedings or the happening of any other conditions or things than those proceedings, conditions, and things which are specified or required by this article. In the discretion of the authority, bonds of a single issue may be issued for the purpose of paying the cost of any one or more, including a combination of, projects at any one location or any number of locations. Any resolution providing for the issuance of bonds under this article shall become effective immediately upon its passage and need not be published or posted, and any such resolution may be passed at any regular or special or adjourned meeting of the authority by a majority of its members. (Ga. L. 1953, Jan.-Feb. Sess., p. 626, § 22; Ga. L. 1955, p. 124, § 23; Ga. L. 1967, p. 385, § 22; Code 1933, § 95A-1222, enacted by Ga. L. 1973, p. 947, § 1.)

32-10-39. Effect of bond issuance on state debt; recitals on face of bonds regarding such effect.

Bonds issued under this article shall not be deemed to constitute a debt of the State of Georgia or a pledge of the credit of the state, but such bonds shall be payable solely from the fund provided for in Code Section 32-10-42; and the issuance of such bonds shall not directly, indirectly, or contingently obligate the state to levy or to pledge any form of taxation whatsoever therefor or to make any appropriation for the payment; and all such bonds shall contain recitals on their face covering substantially the foregoing provisions of this Code section. (Ga. L. 1953, Jan.-Feb. Sess., p. 626, § 23; Ga. L. 1955, p. 124, § 24; Ga. L. 1967, p. 385, § 23; Code 1933, § 95A-1223, enacted by Ga. L. 1973, p. 947, § 1.)

32-10-40. Trust indentures as security for bonds.

(a) In the discretion of the authority, any issue of such bonds may be secured by a trust indenture by and between the authority and a corporate trustee, which may be any trust company or bank having the powers of a trust company inside or outside of the state.

(b) Resolutions providing for the issuance of bonds and trust indentures may contain such provisions for protecting and enforcing the rights and remedies of the bondholders, including the right to the appointment of a receiver for any project or projects upon the default of any principal or interest payment upon the bonds thereof, and the right of any receiver or indenture trustee to enforce collections of rents, revenues, or other charges for the use of the project or projects necessary to pay all costs of operation, the principal and interest on the issue, and cost of collection, and all things reasonably necessary to accomplish the collection of such sums in the event of any default of the authority.

(c) Such resolutions or trust indentures may include covenants setting forth the duties of the authority in relation to the acquisition of the property; the construction of the project; the maintenance, operation, repair, and insurance of the project; and the custody, safeguarding, and application of all moneys; may also provide that any project shall be constructed and paid for under the supervision of department engineers or others satisfactory to the original purchasers of the bonds issued for such project or projects. Such resolution or trust indenture may also require that the security given by contractors and by any depository of the proceeds of the bonds or revenues or other moneys be satisfactory to such purchasers and may also contain provisions concerning the conditions, if any, upon which additional revenue bonds may be issued.

(d) It shall be lawful for any bank or trust company incorporated under the laws of this state to act as such depository and to furnish such indemnifying bonds or pledge such securities as may be required by the authority. The trust indenture may set forth the rights and remedies of the bondholders and of the trustee and may restrict the individual right of action of bondholders as is customary in trust indentures securing bonds and debentures of corporations.

(e) In addition to the foregoing, such trust indenture may contain such other provisions as the authority may deem advisable, reasonable, and proper for the security of the bondholders. All expenses incurred in carrying out such trust indenture may be treated as a part of the cost of maintenance, operation, and repair of the project affected by such indenture or as an administrative expense of the authority. (Ga. L. 1953, Jan.-Feb. Sess., p. 626, § 24; Ga. L. 1955, p. 124, § 25; Ga. L. 1967, p. 385, § 24; Code 1933, § 95A-1224, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1985, p. 149, § 32.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1985, “rights” was substituted for “right” in the second sentence of subsection (d).

32-10-41. Payment of bond proceeds to trustee.

The authority shall, in the resolution providing for issuance of bonds or in the trust indenture, provide for the payment of the proceeds of the sale of the bonds to any officer or person who or any agency, bank, or trust company which shall act as trustee of such funds and shall hold and apply such funds as provided in this article, subject to such regulations as this article and such resolution or trust indenture may provide. (Ga. L. 1953, Jan.-Feb. Sess., p. 626, § 25; Ga. L. 1955, p. 124, § 26; Ga. L. 1967, p. 385, § 25; Code 1933, § 95A-1225, enacted by Ga. L. 1973, p. 947, § 1.)

32-10-42. Pledges of revenues, rents, and earnings; creation and disposition of sinking funds.

(a) The revenues, rents, and earnings derived from any particular project or combined projects or any and all funds from any source received by the department and pledged and allocated by it to the authority as security for the performance of any lease or leases or any and all revenues, rents, and earnings received by the authority, regardless of whether or not such rents, earnings, and revenues were produced by a particular project for which bonds have been issued, unless otherwise pledged and allocated, may be pledged by the authority to payment of principal and interest on bonds of the authority as any resolution authorizing the issuance of the bonds or trust instrument may provide; and such funds so pledged, from whatever source received, may include funds received from one or more or all sources and may be set aside into sinking funds at regular intervals which may be provided in any resolution or trust indenture. All such sinking funds shall be pledged to and charged with the payment of (1) the interest upon such bonds as such interest shall fall due, (2) the principal of the bonds as the same shall fall due, (3) the necessary charges of paying agents for paying principal and interest, and (4) any premium upon bonds retired by call or purchase as provided in this Code section.

(b) The use and disposition of such sinking funds shall be subject to such regulations as may be provided for in the resolution authorizing the issuance of the bonds or in the trust indenture, but, except as may otherwise be provided in such resolutions or trust indentures, such sinking funds individually shall be funds for the benefit of all bonds without distinction or priority of one over another. Subject to the resolution authorizing the issuance of the bonds or the trust indenture of any given bond issue, any moneys in all sinking funds, after all bonds and the interest thereon for which such sinking funds were pledged have been paid, may be paid into the authority fund provided for in Code Section 32-10-13. (Ga. L. 1953, Jan.-Feb. Sess., p. 626, § 26; Ga.

L. 1955, p. 124, § 27; Ga. L. 1967, p. 385, § 26; Code 1933, § 95A-1226, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1974, p. 1422, § 43; Ga. L. 1991, p. 94, § 32.)

32-10-43. Rights and remedies of holders of bonds or interest coupons, of receivers for such holders, and of indenture trustees.

Any holder of bonds or interest coupons issued under this article, any receiver for such holders, or indenture trustee, if any there be, except to the extent the rights given in this Code section may be restricted by resolution passed before the issuance of the bonds or by the trust indenture, may either at law or in equity, by action, mandamus, or other proceedings protect and enforce any and all rights under the laws of Georgia or granted in this Code section or under such resolution or trust indenture. Also, any holder of bonds or interest coupons issued under this article, any receiver for such holders, or any indentured trustee may enforce and compel performance of all duties required by this article or by resolution or trust indenture to be performed by the authority or any officer thereof, including the fixing, charging, and collecting of revenues, rents, and other charges for the use of the project or projects; and, in the event of default of the authority upon the principal and interest obligations of any bond issue, the individual, receiver, or trustee specified in this Code section shall be subrogated to each and every right, specifically including the contract rights of collecting rentals, which the authority may possess against the board and the department or either of them or their respective successors; and, in the pursuit of their remedies as subrogee, such individual, receiver, or trustee may proceed, either at law or in equity, by action, mandamus, or other proceedings to collect any sums by such proceedings due and owing to the authority and pledged or partially pledged directly or indirectly to the benefit of the bond issue of which said individual, receiver, or trustee is representative. No holder of any such bond or receiver or indenture trustee thereof shall have the right to compel any exercise of the taxing power of the state to pay any such bond or the interest thereon or to enforce the payment thereof against any property of the state; nor shall any such bond constitute a charge, lien, or encumbrance, legal or equitable, upon the property of the state. However, any provision of this article or any other law to the contrary notwithstanding, any such bondholder or receiver or indenture trustee shall have the right by appropriate legal or equitable proceedings, including without being limited to mandamus, to enforce compliance by the appropriate public officials with Article VII, Section IV and Article III, Section IX, Paragraph VI(b) of the Constitution of Georgia; and permission is given for the institution of any such proceedings to compel the payment of lease obligations. (Ga. L. 1953, Jan.-Feb. Sess., p. 626,

§ 27; Ga. L. 1955, p. 124, § 28; Ga. L. 1961, p. 3, § 13; Ga. L. 1967, p. 385, § 27; Code 1933, § 95A-1227, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1982, p. 3, § 32; Ga. L. 1983, p. 3, § 56.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1985, in the second sentence “rentals” was substituted for “rental”.

32-10-44. Refunding bonds.

The authority is authorized, subject to any prior resolution or trust indenture, to provide by resolution for the issuance of refunding bonds of the authority for the purpose of refunding any bonds issued under this article and then outstanding, together with accrued interest thereon. The issuance of such refunding bonds, the maturities and all other details thereof, the rights of the holders thereof, and the duties of the authority in respect to the same shall be governed by this article insofar as it may be applicable. (Ga. L. 1953, Jan.-Feb. Sess., p. 626, § 28; Ga. L. 1955, p. 124, § 29; Ga. L. 1967, p. 385, § 28; Code 1933, § 95A-1228, enacted by Ga. L. 1973, p. 947, § 1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1985, in the second sentence “holders” was substituted for “holder”.

RESEARCH REFERENCES

ALR. — Power of municipal corporation to refund special assessment bonds, 102 ALR 202.

Power of municipality or other governmental body to issue refunding bonds to retire obligation in respect of which the creation and maintenance of a sinking

fund by taxation is required by constitutional or statutory provision, 157 ALR 794.

Power of governmental unit to issue bonds as implying power to refund them, 1 ALR2d 134.

32-10-45. Investment of funds in bonds; deposit of bonds as securities.

The bonds authorized in Code Section 32-10-30 are deemed securities in which (1) all public officers and bodies of the state and all municipalities and all municipal subdivisions, (2) all insurance companies and associations and other persons carrying on an insurance business, (3) all banks, bankers, trust companies, savings banks and savings associations, including savings and loan associations, building and loan associations, investment companies, and other persons carrying on a banking business, (4) all administrators, guardians, executors, trustees, and other fiduciaries, and (5) all other persons whatsoever who are now or hereafter may be authorized to invest in bonds or other obligations of the state may properly and legally invest funds, including capital in their control or belonging to them. The bonds are also deemed securities which may be deposited with and shall be received by all

public officers and bodies of this state and all municipalities and municipal subdivisions for any purpose for which the deposit of the bonds or other obligations of this state is now or hereafter may be authorized. (Ga. L. 1953, Jan.-Feb. Sess., p. 626, § 29; Ga. L. 1955, p. 124, § 30; Ga. L. 1967, p. 385, § 29; Code 1933, § 95A-1229, enacted by Ga. L. 1973, p. 947, § 1.)

32-10-46. Protection of interests and rights of bondholders.

While any of the bonds issued by the authority remain outstanding, the powers, duties, or existence of the authority or of its officers, employees, or agents shall not be diminished or impaired in any manner that will affect adversely the interests and rights of the holders of such bonds; nor will the state itself in any way obstruct, prevent, impair, or render impossible the due and faithful performance by its board and department, or either of them, or their successors, of all project rental and lease contracts and all the covenants thereof entered into under this article. This article shall be for the benefit of the state, the authority, and each and every holder of the authority's bonds and upon and after the issuance of bonds under this article shall constitute an irrevocable contract with the holders of such bonds. (Ga. L. 1953, Jan.-Feb. Sess., p. 626, § 34; Ga. L. 1955, p. 124, § 35; Ga. L. 1961, p. 3, § 15; Ga. L. 1967, p. 385, § 34; Code 1933, § 95A-1234, enacted by Ga. L. 1973, p. 947, § 1.)

32-10-47. Confirmation and validation of bonds.

Bonds of the authority shall be confirmed and validated in accordance with the procedure of Article 3 of Chapter 82 of Title 36, the "Revenue Bond Law." (Ga. L. 1955, p. 124, § 33; Ga. L. 1961, p. 3, § 14; Ga. L. 1967, p. 385, § 32; Code 1933, § 95A-1232, enacted by Ga. L. 1973, p. 947, § 1.)

32-10-48. Right of authority to declaratory adjudication of validity and binding effect of lease contracts the rental income of which is pledged to benefit of bonds being validated.

In and as an integral but independent part of the bond validation proceedings under this article, or separately, the authority is given the right to and privilege of a simultaneous or separate right of action or equitable bill against the state, the board, and the department for a declaratory adjudication of the validity and binding effect of all lease contracts whose rental income may be pledged or partially pledged to the benefit of any bonds being validated. In each instance of the exercise of this right the actual controversy shall be whether or not the

purported contracts contested are in all respects good and sufficient, valid, and binding obligations of the board and department. Any citizens of the state may intervene in such actions and assert any ground of objection. It shall be incumbent upon the board and department to defend against an adjudication of such validity or be forever bound unto the authority and all succeeding to the rights of the authority thereafter. Such adjudications may be rendered as an integral but independent part of the judgment upon the validation issue with which they are contested or may be rendered separately. (Ga. L. 1953, Jan.-Feb. Sess., p. 626, § 33; Ga. L. 1955, p. 124, § 34; Ga. L. 1967, p. 385, § 33; Code 1933, § 95A-1233, enacted by Ga. L. 1973, p. 947, § 1.)

32-10-49. Covenant with holders of bonds as to tax-exempt status of authority property and bonds.

It is found, determined, and declared that the creation of the authority and the carrying out of its corporate purposes are in all respects for the benefit of the people of this state and that the authority is an institution of purely public charity and will be performing an essential governmental function in the exercise of the power conferred upon it by this article; and this state covenants with the holders of the bonds that the authority shall be required to pay no taxes or assessments upon any of the property acquired or leased by it under its jurisdiction, control, possession, or supervision or upon its activities in the operation or maintenance of the projects erected by it or upon any fees, rental, or other charges for the use of such projects or upon other income received by the authority and that the bonds of the authority, their transfer, and the income therefrom shall at all times be exempt from taxation from within the state. (Ga. L. 1953, Jan.-Feb. Sess., p. 626, § 30; Ga. L. 1955, p. 124, § 31; Ga. L. 1967, p. 385, § 30; Code 1933, § 95A-1230, enacted by Ga. L. 1973, p. 947, § 1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, “are” was substituted for “is” following “corporate purposes” near the beginning.

RESEARCH REFERENCES

ALR. — Bond or warrant of governmental subdivision as subject of taxation or exemption, 44 ALR 510.

32-10-50. Venue and jurisdiction of actions.

Any action to protect or enforce any rights under this article and any action pertaining to validation of any bonds issued under this article brought in the courts of this state shall be brought in the Superior Court of Fulton County, which shall have exclusive original jurisdiction

of such actions. (Ga. L. 1953, Jan.-Feb. Sess., p. 626, § 31; Ga. L. 1955, p. 124, § 32; Ga. L. 1967, p. 385, § 31; Code 1933, § 95A-1231, enacted by Ga. L. 1973, p. 947, § 1.)

JUDICIAL DECISIONS

Cited in *M.A.R.T.A. v. McCain*, 135 Ga. App. 460, 218 S.E.2d 122 (1975).

ARTICLE 2

STATE ROAD AND TOLLWAY AUTHORITY

PART 1

GENERAL PROVISIONS

32-10-60. Definitions.

As used in this article, the term:

(1) “Approach” means that distance on either end of a bridge as shall be required to develop the maximum traffic capacity of a bridge, including but not limited to necessary rights of way, grading, paving, minor drainage structures, and such other construction necessary to the approach.

(2) “Authority” means the State Tollway Authority created by the “State Tollway Authority Act,” Ga. L. 1953, Jan.-Feb. Sess., p. 302, as amended particularly by Ga. L. 1972, p. 179, and on and after April 30, 2001, also means the State Road and Tollway Authority.

(3) “Bridge” means a structure, including the approaches thereto, erected in order to afford unrestricted vehicular passage over any obstruction in any public road, including but not limited to rivers, streams, ponds, lakes, bays, ravines, gullies, railroads, public highways, and canals.

(4) “Cost of project” means the cost of construction, including relocation or adjustments of utilities; the cost of all lands, properties, rights, easements, and franchises acquired; relocation expenses; the cost of all machinery and equipment necessary for the operation of the project; financing charges; interest prior to and during construction and for such a period of time after completion of construction as shall be deemed necessary to allow the earnings of the project to become sufficient to meet the requirements of the bond issue; the cost of engineering, legal expenses, plans and specifications, and other expenses necessary or incident to determining the feasibility or practicability of the project; administrative expenses; and such other

expenses as may be necessary or incident to the financing authorized in this article, the construction of any project, and the placing of the same in operation. Any obligation or expense incurred for any of the foregoing purposes shall be regarded as a part of the cost of the project and may be paid or reimbursed as such out of the proceeds of revenue bonds issued for such project under this article.

(5) "Project" means land public transportation systems, including: (A) one or more roads or bridges or a system of roads, bridges, and tunnels or improvements thereto included on an approved state-wide transportation improvement program on the Developmental Highway System as set forth in Code Section 32-4-22, as now or hereafter amended, or a comprehensive transportation plan pursuant to Code Section 32-2-3 or which are toll access roads, bridges, or tunnels, with access limited or unlimited as determined by the authority, and such buildings, structures, parking areas, appurtenances, and facilities related thereto, including but not limited to approaches, cross streets, roads, bridges, tunnels, and avenues of access for such system; and (B) any program for mass transportation or mass transportation facilities as approved by the authority and the department and such buildings, structures, parking areas, appurtenances, and facilities related thereto, including, but not limited to, approaches, cross streets, roads, bridges, tunnels, and avenues of access for such facilities.

(6) "Relocation expenses" means all necessary relocation expenses, replacement housing expenses, relocation advisory services, expenses incident to the transfer of real property, and litigation expenses of any individual, family, business, farm operation, or nonprofit organization displaced by authority projects to the extent authorized by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended by the Uniform Relocation Act Amendments of 1987, Title IV of Public Law 100-17.

(6.1) "Revenue" or "revenues" shall mean any and all moneys received from the collection of tolls authorized by Code Sections 32-10-64 and 32-10-65, any federal highway or transit funds and reimbursements, any other federal highway or transit assistance received from time to time by the authority, any other moneys of the authority pledged for such purpose, and any other moneys received by the authority pursuant to the Georgia Transportation Infrastructure Bank.

(7) "Revenue bonds," "revenue bond," "bonds," or "bond" means any bonds, notes, interim certificates, reimbursement anticipation notes, or other evidences of indebtedness of the authority authorized by Part 2 of this article, including without limitation obligations issued to refund any of the foregoing.

(8) "Self-liquidating" means that, in the judgment of the authority, the revenues and earnings to be derived by the authority from any project or combination of projects or from any other revenues available to the authority, together with any maintenance, repair, operational services, funds, rights of way, engineering services, and any other in-kind services to be received by the authority from appropriations of the General Assembly, the department, other state agencies or authorities, the United States government, or any county or municipality, shall be sufficient to provide for the maintenance, repair, and operation and to pay the principal and interest of revenue bonds which may be issued for the cost of such project, projects, or combination of projects.

(9) "Utility" means any publicly, privately, or cooperatively owned line, facility, or system for producing, transmitting, transporting, or distributing communications, power, electricity, light, heat, gas, oil products, passengers, water, steam, clay, waste, storm water not connected with highway drainage, and other similar services and commodities, including publicly owned fire and police, and traffic signals and street lighting systems, which directly or indirectly serve the public. This term also means a person, municipal corporation, county, state agency, or public authority which owns or manages a utility as defined in this paragraph. (Ga. L. 1953, Jan.-Feb. Sess., p. 302, § 3; Ga. L. 1972, p. 179, § 3; Code 1933, § 95A-1238, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1974, p. 1422, § 44; Ga. L. 1976, p. 775, § 3; Ga. L. 1977, p. 1285, § 1; Ga. L. 1982, p. 3, § 32; Ga. L. 1986, p. 1241, § 1; Ga. L. 1988, p. 227, § 1; Ga. L. 2001, p. 1251, § 1-6; Ga. L. 2008, p. 73, § 1/HB 1019.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2001, "April 30, 2001," was substituted for "the date of the year 2001 change of the authority's name" in paragraph (2).

U.S. Code. — The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, referred to in this Code section, is codified as 42 U.S.C. § 4601 et seq.

JUDICIAL DECISIONS

Cited in *Campbell v. State Rd. & Tollway Auth.*, 276 Ga. 714, 583 S.E.2d 32 (2003).

OPINIONS OF THE ATTORNEY GENERAL

Tollway Authority may include part of State Highway System. — It is lawful, under certain circumstances, for portions of the State Highway System to be included in a State Tollway Authority project and for such portions of highways to be improved with funds of the State

Tollway Authority; further, such portions of tollway projects need not necessarily be included in that portion of a project which can be used by the public only upon payment of a toll. 1974 Op. Att'y Gen. No. 74-5.

"Feeder route" may be avenue of

access. — Existing highway facility which would be a “feeder route” into a tollway can be considered as an avenue of access to a tollway system within the meaning of the definition of the term “project”; provided, of course, that the “feeder route” bears an actual and legitimate relationship to the tollway as an avenue of access to the tollway. 1974 Op. Att’y Gen. No. 74-5.

RESEARCH REFERENCES

Am. Jur. 2d. — 40 Am. Jur. 2d, Highways, Streets, and Bridges, § 685.

32-10-61. Continuation of State Tollway Authority as State Road and Tollway Authority.

The State Tollway Authority shall continue to be a body corporate and politic and an instrumentality and public corporation of the state known as the “State Road and Tollway Authority.” It shall have perpetual existence. In said name it may contract and be contracted with, sue and be sued, implead and be impleaded, and complain and defend in all courts of this state, subject to the limitations of Code Section 32-10-110. (Ga. L. 1953, Jan.-Feb. Sess., p. 302, § 2; Ga. L. 1962, Sept.-Oct. Ex. Sess., p. 31, § 1; Ga. L. 1972, p. 179, § 2; Code 1933, § 95A-1239, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 2001, p. 1251, § 1-7.)

32-10-62. Membership; compensation; officers; bylaws; quorum; record of proceedings.

(a) The members of the authority shall be ex officio the Governor, the commissioner of transportation, the director of the Office of Planning and Budget, one member to be appointed by the Lieutenant Governor and to serve during the term of office of the Lieutenant Governor and until a successor is duly appointed and qualified, and one member to be appointed by the Speaker of the House of Representatives and to serve during the term of office of the Speaker of the House of Representatives and until a successor is duly appointed and qualified; and membership shall be a separate and distinct duty for which they shall receive no additional compensation. All members of the authority shall be entitled to all actual expenses necessarily incurred while in the performance of duties on behalf of the authority. The authority shall elect one of its members as chairman. It shall also elect a secretary and a treasurer, who need not necessarily be members of the authority. The authority may make such bylaws for its government as is deemed necessary but it is under no duty to do so. A majority of the members of the authority shall constitute a quorum necessary for the transaction of business, and a majority vote of those present at any meeting at which there is a quorum shall be sufficient to do and perform any action permitted to the authority by this article.

(b) No vacancy on the authority shall impair the right of the quorum to transact any and all business as stated in this Code section. Members of the authority shall be accountable as trustees. They shall cause to be kept adequate books and records of all transactions of the authority, including books of income and disbursements of every nature. The books and records shall be inspected and audited by the state auditor at least once a year. (Ga. L. 1953, Jan.-Feb. Sess., p. 302, § 2; Ga. L. 1962, Ex. Sess., p. 31, § 1; Ga. L. 1963, p. 283, § 1; Ga. L. 1972, p. 179, § 2; Code 1933, § 95A-1240, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1982, p. 3, § 32; Ga. L. 2001, p. 1251, § 1-8.)

Code Commission notes. — Pursuant office” was substituted for “term in office” to Code Section 28-9-5, in 2001, “term of in the first sentence of subsection (a).

JUDICIAL DECISIONS

Cited in *Campbell v. State Rd. & Tollway Auth.*, 276 Ga. 714, 583 S.E.2d 32 (2003).

32-10-63. Powers of authority generally.

The authority shall have, in addition to any other powers conferred in this article, the following powers:

- (1) To have a seal and alter the same at its pleasure;
- (2) To acquire by purchase, lease, exchange, or otherwise and to hold, lease, and dispose of real and personal property of every kind and character for its corporate purposes;
- (3) To appoint such additional officers, who need not be members of the authority, as the authority deems advisable and to employ such experts, employees, and agents as may be necessary, in its judgment, to carry on properly the business of the authority; to fix their compensation; and to promote and discharge same;
- (4) To acquire in its own name by purchase, on such terms and conditions and in such manner as it may deem proper, or by condemnation in accordance with any and all existing laws applicable to the condemnation of property for public use, including but not limited to those procedures in Article 1 of Chapter 3 of this title, real property or rights or easements therein or franchises necessary or convenient for its corporate purposes; and to use the same so long as its corporate existence shall continue and to lease or make contracts with respect to the use of or to dispose of the same in any manner it deems to the best advantage of the authority, the authority being under no obligation to accept and pay for any property condemned under this article except from the funds provided under the authority

of this article; and, in any proceedings to condemn, such order may be made by the court having jurisdiction of the action or proceedings as may be just to the authority and to the owners of the property to be condemned; and no property shall be acquired under this article upon which any lien or other encumbrance exists unless at the time such property is so acquired a sufficient sum of money be deposited in trust to pay and redeem such lien or encumbrance in full;

(5) To make such contracts, leases, or conveyances as the legitimate and necessary purposes of this article shall require, including but not limited to contracts for construction or maintenance of projects, provided that the authority shall consider the possible economic, social, and environmental effects of each project, and the authority shall assure that possible adverse economic, social, and environmental effects relating to any proposed project have been fully considered in developing such project and that the final decision on the project is made in the best overall public interest, taking into consideration the need for fast, safe, and efficient transportation, public services, and the cost of eliminating or minimizing adverse economic, social, and environmental effects. Furthermore, in order to assure that adequate consideration is given to economic, social, and environmental effects of any tollway project under consideration, the authority shall:

(A) Follow the processes required for federal-aid highway projects, as determined by the National Environmental Policy Act of 1969, as amended, except that final approval of the adequacy of such consideration shall rest with the Governor, as provided in subparagraph (C) of this paragraph, acting as the chief executive of the state, upon recommendation of the commissioner, acting as chief administrative officer of the Department of Transportation;

(B) In the location and design of any project, avoid the taking of or disruption of existing public parkland or public recreation areas unless there are no prudent or feasible project location alternates. The determination of prudence and feasibility shall be the responsibility of the authority as part of the consideration of the overall public interest;

(C) Not approve and proceed with acquisition of rights of way and construction of a project until: (i) there has been held, or there has been offered an opportunity to hold, a public hearing or public hearings on such project in compliance with requirements of the Federal-aid Highway Act of 1970, as amended, except that neither acquisition of right of way nor construction shall be required to cease on any federal-aid project which has received federal approval pursuant to the National Environmental Policy Act of 1969, as amended, and is subsequently determined to be eligible for

construction as an authority project utilizing, in whole or in part, a mix of federal funds and authority funds; and (ii) the adequacy of environmental considerations has been approved by the Governor, for which said approval of the environmental considerations may come in the form of the Governor's acceptance of a federally approved environmental document; and

(D) Let by public competitive bid upon plans and specifications approved by the chief engineer or his or her successors all contracts for the construction of projects;

(6) To construct, erect, acquire, own, repair, maintain, add to, extend, improve, operate, and manage projects, as defined in paragraph (5) of Code Section 32-10-60, the cost of any such project to be paid in whole or in part from the proceeds of revenue bonds of the authority, from other funds available to the authority, or from any combination of such sources;

(7) To accept and administer any federal highway or federal transit funds and any other federal highway or transit assistance received from time to time for the State of Georgia and to accept, with the approval of the Governor, loans and grants, either or both, of money or materials or property of any kind from the United States government or the State of Georgia or any political subdivision, authority, agency, or instrumentality of either of them, upon such terms and conditions as the United States government or the State of Georgia or such political subdivision, authority, agency, or instrumentality of either of them shall impose;

(8) To borrow money for any of its corporate purposes, to issue negotiable revenue bonds payable from revenues of such projects, and to provide for the payment of the same and for the rights of the holders thereof;

(9) To exercise any power usually possessed by private corporations performing similar functions, which power is not in conflict with the Constitution and laws of Georgia;

(10) To covenant with bondholders for the preparation of annual budgets for each project and for approval thereof by engineers or other representatives designated by the bondholders of each project, as may be provided for in any bond issue resolutions or trust indentures, and to covenant for the employment of experts or traffic engineers;

(11) To lease its property to the United States government, the State of Georgia, or its political subdivisions, including any agency, authority, or instrumentality of the foregoing governments or political subdivisions, as well as to persons, public or private, for the construction or operation of facilities of benefit to the general public;

(12) By or through its authorized agents or employees, to enter upon any lands, waters, and premises in the state for the purpose of making surveys, soundings, drillings, and examinations as the authority may deem necessary or convenient for the purposes of this article; and such entry shall not be deemed a trespass. The authority shall, however, make reimbursement for any actual damages resulting from such activities;

(13) To make reasonable regulations for the installation, construction, maintenance, repairs, renewal, and relocation of pipes, mains, conduits, cables, wires, towers, poles, and other equipment and appliances of any public utility in, on, along, over, or under any project;

(14) To pledge, mortgage, convey, assign, hypothecate, or otherwise encumber any property of the authority, including but not limited to real property, fixtures, personal property, intangible property, revenues, income, charges, fees, or other funds and to execute any lease, trust indenture, trust agreement, resolution, agreement for the sale of the authority's bonds, loan agreement, mortgage, deed to secure debt, trust deed, security agreement, assignment, or other agreement or instrument as may be necessary or desirable, in the judgment of the authority, to secure such bonds; and

(15) To do all things necessary or convenient to carry out the powers expressly given in this article. (Ga. L. 1953, Jan.-Feb. Sess., p. 302, § 4; Ga. L. 1972, p. 179, §§ 9-13; Code 1933, § 95A-1241, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1974, p. 1422, § 45; Ga. L. 1988, p. 227, §§ 2-4; Ga. L. 1994, p. 591, § 11; Ga. L. 2001, p. 1251, § 1-9; Ga. L. 2009, p. 8, § 32/SB 46.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1988, a comma was inserted following "agency" in two places in paragraph (7).

U.S. Code. — The Federal-aid Highway Act of 1970, referred to in this Code section, is codified as various sections throughout 23 U.S.C. Ch. 1.

The National Environmental Policy Act of 1969, referred to in this Code section, is codified as 42 U.S.C. Ch. 55, § 4321 et seq.

Cross references. — Prohibition against authorizing construction or maintenance of private road, § 32-1-8.

JUDICIAL DECISIONS

General Assembly's power to direct federal funds to state authority. — Under the Georgia Constitution, the General Assembly had the power to enact O.C.G.A. § 32-10-63(7) and related statutes that authorized the State Road and Tollway Authority (SRTA) to receive

federal-aid highway funds; thus, the trial court did not err in denying the challenge of the taxpayers to the trial court's validation and approval of the bonds the SRTA was empowered to issue for highway construction projects which were to be retired using future federal-aid highway funds

the state would receive. *Campbell v. State Rd. & Tollway Auth.*, 276 Ga. 714, 583 S.E.2d 32 (2003).

OPINIONS OF THE ATTORNEY GENERAL

Department of Transportation may enter into transportation construction contracts with financial backing from State Road and Tollway Authority. — Department of Transportation may enter into transportation construction contracts with all or a portion of the

financial backing for the contracts coming from a contractual promise from the State Road and Tollway Authority to borrow and provide money to DOT as and when needed to expend on projects that are the subjects of the construction contracts. 2001 Op. Att'y Gen. No. 2001-10.

32-10-64. General toll powers; police powers; rules and regulations.

(a) For the purpose of earning sufficient revenue to make possible, in conjunction with other funds available to the authority, the financing of the construction or acquisition of projects of the authority with revenue bonds, the authority is authorized and empowered to collect tolls on each and every project which it shall cause to be constructed or acquired. It is found, determined, and declared that the necessities of revenue bond financing are such that the authority's toll earnings on each project or projects, in conjunction with other funds available to the authority, must exceed the actual maintenance, repair, and normal reserve requirements of such projects, together with monthly or yearly sums needed for the sinking fund payments upon the principal and interest obligations of financing such project or projects; however, within the framework of these legitimate necessities of the authority and subject to all bond resolutions, trust indentures, and all other contractual obligations of the authority, the authority is charged with the duty of the operation of all projects in the aggregate at the most reasonable possible level of toll charges; and, furthermore, the authority is charged with the responsibility of a reasonable and equitable adjustment of such toll charges as between the various classes of users of any given project.

(b) In the exercise of the authority's toll powers, the authority is authorized to exercise so much of the police powers of the state as shall be necessary to maintain the peace and accomplish the orderly handling of the traffic and the collection of tolls on all projects operated by the authority; and the authority shall prescribe such rules and regulations for the method of taking tolls and the employment and conduct of toll takers and other operating employees as the authority, in its discretion, may deem necessary.

(c)(1) No motor vehicle shall be driven or towed through a toll collection facility, where appropriate signs have been erected to notify

traffic that it is subject to the payment of tolls beyond such sign, without payment of the proper toll. In the event of nonpayment of the proper toll, as evidenced by video or electronic recording, the registered owner of such vehicle shall be liable to make prompt payment to the authority of the proper toll and an administrative fee of \$25.00 per violation to recover the cost of collecting the toll. The authority or its authorized agent shall provide notice to the registered owner of a vehicle, and a reasonable time to respond to such notice, of the authority's finding of a violation of this subsection. Upon failure of the registered owner of a vehicle to pay the proper toll and administrative fee to the authority after notice thereof and within the time designated in such notice, the authority may proceed to seek collection of the proper toll and the administrative fee as debts owing to the authority, in such manner as the authority deems appropriate and as permitted under law. If the authority finds multiple failures by a registered owner of a vehicle to pay the proper toll and administrative fee after notice thereof and within the time designated in such notice, the authority may refer the matter to the Office of State Administrative Hearings. The scope of any hearing held by the Office of State Administrative Hearings shall be limited to consideration of evidence relevant to a determination of whether the registered owner has failed to pay, after notice thereof and within the time designated in such notice, the proper toll and administrative fee. The only affirmative defense that may be presented by the registered owner of a vehicle at such a hearing is theft of the vehicle, as evidenced by presentation at the hearing of a copy of a police report showing that the vehicle has been reported to the police as stolen prior to the time of the alleged violation. A determination by the Office of State Administrative Hearings of multiple failures to pay by a registered owner of a vehicle shall subject such registered owner to imposition of, in addition to any unpaid tolls and administrative fees, a civil monetary penalty payable to the authority of not more than \$70.00 per violation. Upon failure by a registered owner to pay to the authority, within 30 days of the date of notice thereof, the amount determined by the Office of State Administrative Hearings as due and payable for multiple violations of this subsection, the motor vehicle registration of such registered owner shall be immediately suspended by operation of law. The authority shall give notice to the Department of Revenue of such suspension. Such suspension shall continue until the proper toll, administrative fee, and civil monetary penalty as have been determined by the Office of State Administrative Hearings are paid to the authority. Actions taken by the authority under this subsection shall be made in accordance with policies and procedures approved by the members of the authority.

(2) The registered owner of a vehicle which is observed being driven or towed through a toll collection facility without payment of

the proper toll may avoid liability under this subsection by presenting to the authority a copy of a police report showing that the vehicle had been reported to the police as stolen prior to the time of the alleged violation.

(3) For purposes of this subsection, for any vehicle which is registered to an entity other than a natural person, the term "registered owner" shall be deemed to refer to the natural person who is the operator of such motor vehicle at the time of the violation of this subsection, but only if the entity to which the vehicle is registered has supplied to the authority, within 60 days following notice from the authority or its authorized agent, information in the possession of such entity which is sufficient to identify and give notice to the natural person who was the operator of the motor vehicle at the time of the violation of this subsection.

(d) Any person who shall use or attempt to use any currency or coins other than legal tender of the United States of America or tokens issued by the authority or who shall use or attempt to use any electronic device or equipment not authorized by the authority in lieu of or to avoid payment of a toll shall be guilty of a misdemeanor.

(e) Any person, except an authorized agent or employee of the authority, who removes any coin from the pavement or ground surface within 15 feet of a toll collection booth or toll collection machine, except to retrieve coins the person dropped while attempting payment of that person's toll, shall be guilty of a misdemeanor.

(f) Any person who enters without authorization or who willfully, maliciously, and forcibly breaks into any mechanical or electronic toll collection device of the authority or appurtenance thereto shall be guilty of a misdemeanor.

(g) Any law enforcement officer shall have the authority to issue citations for toll evasions if such officer is a witness to any of the following violations:

(1) A person forcibly or fraudulently passes a toll collection device without payment or refuses to pay, evades, or attempts to evade the payment of such tolls;

(2) A person turns, or attempts to turn, a vehicle around on a bridge, approach, or toll plaza where signs have been erected forbidding such turning; or

(3) A person refuses to pass through the toll collection facility after having come within the area where signs have been erected notifying traffic that it is entering the area where a toll is collectable or where vehicles may not turn around and where vehicles are required to pass through the toll gates for the purposes of collecting tolls.

(h) The authority may in its discretion use such technology, including but not limited to automatic vehicle license tag identification photography and video surveillance, either by electronic imaging or photographic copy, that it deems necessary to aid in the collection of tolls and enforcement of toll violations. Such technology shall not be used to produce any photograph, microphotograph, electronic image, or videotape showing the identity of any person in a motor vehicle except that such technology may be utilized for general surveillance of a toll collection facility for the security of toll collection facility employees.

(i) State and local law enforcement entities are authorized to enter into traffic and toll enforcement agreements with the authority. Any funds received by a state law enforcement entity pursuant to such toll enforcement agreement shall be subject to annual appropriations by the General Assembly to such law enforcement entity for the purpose of performing its duties pursuant to such agreement. (Ga. L. 1953, Jan.-Feb. Sess., p. 302, § 8; Ga. L. 1972, p. 179, § 15; Code 1933, § 95A-1245, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1979, p. 1091, § 2; Ga. L. 1988, p. 227, § 5; Ga. L. 1993, p. 366, § 2; Ga. L. 2001, p. 1251, § 1-10; Ga. L. 2004, p. 498, § 1; Ga. L. 2006, p. 308, § 1/HB 1190.)

OPINIONS OF THE ATTORNEY GENERAL

Inclusion of portions of State Highway System in tollway projects. — It is lawful, under certain circumstances, for portions of State Highway System to be included in a State Tollway Authority project and for such portions of highways to be improved with funds of State Tollway Authority; further, such portions of tollway projects need not necessarily be

included in that portion of project which can be used by public only upon payment of a toll. 1974 Op. Att'y Gen. No. 74-5.

Phrase "is authorized and empowered" means that act may or may not be done within the discretion of the State Tollway Authority, which is the body authorized to make the decision. 1974 Op. Att'y Gen. No. 74-5.

RESEARCH REFERENCES

ALR. — Tolls as taxes within constitutional provisions respecting taxes, 167 ALR 1356.

32-10-65. Fixing, revising, charging, and collecting tolls; use and disposition of tolls generally.

The authority is authorized to fix, revise, charge, and collect tolls for the use of each project. Such tolls shall be so fixed and adjusted as to carry out and perform the terms and provisions of any resolution, trust indenture, or contract with or for the benefit of bondholders; and such tolls shall not be subject to supervision or regulation by any other commission, board, bureau, or agency of the state. The use and

disposition of tolls and revenues shall be subject to the provisions of the resolution authorizing the issuance of such bonds or of the trust indenture securing the same, if there are any. (Ga. L. 1953, Jan.-Feb. Sess., p. 302, § 33; Code 1933, § 95A-1270, enacted by Ga. L. 1973, p. 947, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 40 Am. Jur. 2d, Highways, Streets, and Bridges, § 692 et seq.

32-10-65.1. Expiration of tolls established under article.

Every toll established under this article must expire after a specified period of time and may be extended beyond said time by approval of the State Road and Tollway Authority. (Code 1981, § 32-10-65.1, enacted by Ga. L. 1990, p. 8, § 32; Ga. L. 2001, p. 1251, § 2-1.)

32-10-66. Duty of authority to prescribe rules and regulations for projects generally.

It shall be the duty of the authority to prescribe rules and regulations as approved by the department for the operation of each project constructed under this article, including rules and regulations to ensure maximum use of such project. The authority is authorized to promulgate such rules and regulations for the use and occupancy of the project as may be necessary and proper for the public's safety and convenience, for the preservation of its property, and for the collection of tolls. (Ga. L. 1953, Jan.-Feb. Sess., p. 302, § 11; Ga. L. 1972, p. 179, § 18; Code 1933, § 95A-1248, enacted by Ga. L. 1973, p. 947, § 1.)

32-10-67. Study, financing, construction, and operation of new projects; cooperation and assistance of Department of Transportation.

(a) The Governor, in his discretion or upon the recommendation of the State Transportation Board, is authorized and empowered to call a joint meeting of the authority and the board for the purpose of initiating all projects which may be considered under the authority of this article. Upon the concurrence of the Governor, a majority of the board, and the authority, the board or the authority is authorized and empowered to commence the study of any given project or projects and to provide for their construction. An appropriate resolution of such joint meeting shall provide for divisions of duties and responsibilities between the authority and the board in connection with such studies. In keeping with such resolution or resolutions, the authority and the board are authorized, in the performance of their assigned duties, to expend from any sums

available such sums as may be necessary for the survey and study and completion of any project or projects; and such expenditures may include those necessary for all traffic surveys, expert studies, and all other expense reasonably necessary in establishing the feasibility of any given project and in the execution of all plans, specifications, and all other things necessary for revenue bond financing and construction, including all supervision of every kind required in its completion. If such expenditures, or any part of them, shall be undertaken by the board, the board shall keep proper records which shall reflect the amounts spent on each and every project study. Upon completion of any given project or projects financed by any given revenue bond issued, so long as there shall be funds available in the hands of the authority from the issue of revenue bonds to finance such project or projects, the board may demand the reimbursement of such expenditures; however, if not reimbursed, said expenditures shall be legitimate expenses of operation of the board. The authority, upon the completion or receipt of such studies or plans and specifications or other aids, shall proceed, if such project or projects are possible, to finance, acquire rights of way, construct, and operate such projects pursuant to its purposes, powers, and duties.

(b) Upon the concurrence of the board, the Department of Transportation shall have the right to provide maintenance and operational assistance to the authority as may be necessary to effectuate the purposes of this article, including but not limited to authorizing employees of the department to assist the authority in the collection of tolls on authority projects. The authority shall reimburse the department for such assistance. (Ga. L. 1953, Jan.-Feb. Sess., p. 302, § 6; Code 1933, § 95A-1243, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1983, p. 635, § 1.)

JUDICIAL DECISIONS

Cited in *Campbell v. State Rd. & Tollway Auth.*, 276 Ga. 714, 583 S.E.2d 32 (2003).

32-10-68. Letting of contracts by competitive bids.

All contracts of the authority for the construction of any project authorized by this article shall be let to the reliable bidder submitting the lowest sealed bid upon plans and specifications approved by the department. The procedures for letting such bids shall conform to those prescribed for the department in Code Sections 32-2-64 through 32-2-72. (Ga. L. 1953, Jan.-Feb. Sess., p. 302, § 13; Code 1933, § 95A-1242, enacted by Ga. L. 1973, p. 947, § 1.)

RESEARCH REFERENCES

ALR. — Right or duty of public authorities to require single bid or to let single contract for entire improvement or for two or more separate improvements, 123 ALR 577.

Contract for personal services as within requirement of submission of bids as condition of public contract, 15 ALR3d 733.

Requirement that public contract be awarded on competitive bidding as appli-

cable to contract for public utility, 80 ALR3d 979.

Right of bidder for state or municipal contract to rescind bid on ground that bid was based upon his own mistake or that of his employee, 2 ALR4th 991.

Encroachment of trees, shrubbery, or other vegetation across boundary line, 65 ALR4th 603.

32-10-69. Conveyance by Governor of real property; power to acquire and expend funds for property interests.

(a) The Governor is authorized and empowered to convey to the authority, on behalf of the state, any real property or interest therein or any rights of way owned by the state, including property or rights of way acquired in the name of the department or board, which is used at the time or may, upon completion of any action committed to the authority by this article, be used as a project. The consideration for such conveyance shall be determined by the Governor and expressed in the deed of conveyance; however, such consideration shall be nominal, the benefits flowing to the state and its citizens constituting full and adequate actual consideration, provided that in the event of the inability of the authority to issue or sell the revenue bonds required for financing the completion of any given project or projects, then, subject to the intervening rights of any innocent party, all rights, titles, and interests so conveyed shall forever revert to the department or agency from which it came.

(b) The governing authority of any county or incorporated municipality of this state is authorized and empowered on behalf of such political subdivision to convey to the authority any real property or interest therein or any rights of way owned by such political subdivision, which is used at the time or may, upon completion of any action committed to the authority by this article, be used as a project if conveyed by a county or incorporated municipality. The consideration for such conveyance shall be determined by the governing authority of such political subdivision and expressed in the deed of conveyance. Such consideration, however, shall be nominal, the benefits flowing to the political subdivisions and its citizens constituting full and adequate actual consideration. However, nothing in this subsection shall prevent the authority from reimbursing a political subdivision, as authorized in Code Section 32-10-70.

(c) The board or its successors and the department are empowered to acquire, in any manner now permitted to them by law, and to expend

funds available to them for such acquisition, real property, interests therein, or rights of way which upon acquisition may be conveyed by the Governor as provided in this Code section to the authority. (Ga. L. 1953, Jan.-Feb. Sess., p. 302, § 7; Ga. L. 1972, p. 179, § 14; Code 1933, § 95A-1244, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1988, p. 227, § 6; Ga. L. 1989, p. 14, § 32; Ga. L. 2001, p. 1251, § 1-10.1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1988, a comma was substituted for a semicolon following “actual consideration” in subsection (a).

Editor’s notes. — Ga. L. 1988, p. 227, § 8, not codified by the General Assembly, provides: “Every toll established under this Act must expire at a specified period of time, and may be extended beyond said

time by approval of the State Tollway Authority.”

Ga. L. 1990, p. 8, § 55, part of an Act to correct errors and omissions in the Code, repealed Ga. L. 1988, p. 227, § 8, which provided for the expiration and extension of tolls, and enacted those provisions as Code Section 32-10-65.1.

32-10-70. Transfer of real and personal property to authority by public bodies and officers.

All counties, municipalities, and other political subdivisions of the state and all public agencies and officers of the state, notwithstanding any contrary provisions of the law, are authorized and empowered to lease, lend, grant, or convey to the authority, upon its request and upon such terms and conditions as the authority and the proper officials of such counties, cities, other political subdivisions, or public agencies or officials may agree upon as reasonable and fair, and without necessity for any advertisement, order of court, or other action or formality other than the regular execution of the proper instrument, any real or personal property which may be necessary or convenient to the effectuation of the purpose of this article, including real or personal property devoted to public use. (Code 1933, § 95A-1244.1, enacted by Ga. L. 1979, p. 1091, § 1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1991, a comma

was inserted following “municipalities” near the beginning of this Code section.

32-10-71. Acquisition, maintenance, and operation of tollway projects.

(a) The authority is authorized and empowered to acquire, maintain, repair, improve, and operate a tollway project whose status at the time of acquisition is a toll facility or which was operated as a toll facility at some point in its existence. For the purpose of earning sufficient revenue to make possible the maintenance, repair, and improvement of the acquired project, the authority is authorized to collect tolls on each and every project it acquires.

(b) When an existing state tollway facility has been acquired from a local government by the authority or the department, and the state tollway facility provides access to an island with public beaches that are in need of maintenance, repair, or restoration, the State Road and Tollway Authority may assist the local government in the collection of a parking fee for each vehicle entering the island. The local government is authorized to set a fee on roads, streets, and parking facilities owned by the local government for such purposes and may contract with the authority to collect the fee. The department is authorized to assist the authority in the collection of the fee. The local government shall reimburse the department and the authority for any costs associated with executing the terms of the contract.

(c) When a state highway provides access to an island with public beaches that are in need of maintenance, repair, or restoration, the Department of Transportation may, if consistent with federal law and regulations, authorize the local government to set and collect a parking fee for the purpose of providing funding for such maintenance, repair, or restoration. The department is authorized to allow the authority to collect such parking fee on the state highway system, provided that the collection point shall lie within the corporate limits of the local government setting the parking fee. The authority is authorized to contract with the local government for the collection of the fee. The local government shall reimburse the authority for any costs associated with executing the terms of the contract. (Ga. L. 1953, Jan.-Feb. Sess., p. 302, § 8; Ga. L. 1972, p. 179, § 8; Code 1933, § 95A-1245.1, enacted by Ga. L. 1979, p. 1091, § 3; Ga. L. 1991, p. 1409, § 1; Ga. L. 2001, p. 1251, § 2-1.)

32-10-72. Authority fund.

All revenue in excess of all obligations of the authority of any nature, together with all unused receipts and gifts of every kind and nature whatsoever, shall be and become the authority fund. The authority, in its discretion, is charged with the duty of pledging, utilizing, or expending the authority fund for the following purposes:

(1) Pledges to the payment of any revenue bond issue requirements, sinking or reserve funds, as may be provided for under Code Section 32-10-102;

(2) The payment of any outstanding unpaid revenue bond obligations or administrative expenses;

(3) The construction of all or any part of projects, the need for which is concurred in by the Governor and the board;

(4) The most advantageous obtainable redemptions and retirements of the authority's bonds pursuant to the prepayment redemp-

tion privileges accorded to the authority upon the various issues of bonds outstanding;

(5) The most advantageous open market purchase of the authority's bonds that the authority may accomplish;

(6) Investment in such securities and in such manner as it determines to be in its best interest; and

(7) Subject to the terms of any resolution or trust indenture authorizing the issuance of revenue bonds, the transfer of funds to the department to be used by the department for department purposes. (Ga. L. 1953, Jan.-Feb. Sess., p. 302, § 10; Ga. L. 1972, p. 179, § 17; Code 1933, § 95A-1247, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 2001, p. 1251, § 1-11.)

JUDICIAL DECISIONS

Cited in *Campbell v. State Rd. & Tollway Auth.*, 276 Ga. 714, 583 S.E.2d 32 (2003).

32-10-73. Designation of moneys received pursuant to article as trust funds.

All moneys received pursuant to the authority of this article, whether as proceeds from the sale of revenue bonds or as revenues, tolls, and earnings, shall be deemed to be trust funds to be held and applied solely as provided in this article. The bondholders paying or entitled to receive the benefits of such bonds shall have a lien on all such funds until applied as provided for in any resolution or trust indenture of the authority. (Ga. L. 1953, Jan.-Feb. Sess., p. 302, § 32; Code 1933, § 95A-1269, enacted by Ga. L. 1973, p. 947, § 1.)

JUDICIAL DECISIONS

Cited in *Campbell v. State Rd. & Tollway Auth.*, 276 Ga. 714, 583 S.E.2d 32 (2003).

32-10-74. Effect of article.

This article shall be deemed to provide an additional and alternative method for the doing of the things authorized thereby and shall be regarded as supplemental and additional to powers conferred by other laws and shall not be regarded as in derogation of any powers now existing. (Ga. L. 1953, Jan.-Feb. Sess., p. 302, § 34; Code 1933, § 95A-1271, enacted by Ga. L. 1973, p. 947, § 1.)

32-10-75. Construction of article.

This article, being for the welfare of the state and its inhabitants, shall be liberally construed to effect the purposes of this article. (Ga. L. 1953, Jan.-Feb. Sess., p. 302, § 35; Code 1933, § 95A-1272, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1991, p. 94, § 32.)

32-10-76. Grant programs; pilot program formation; factors to be considered in selecting pilot projects; procedures; eligible projects.

(a) As used in this Code section, the term:

(1) "Local government authority" and "state" mean the same as under 49 U.S.C. Section 5302.

(2) "Public-private project initiative" means a local or regional streetcar project which is proposed and advanced by a cooperative entity or sponsor that involves a combined public and private sector financing and development structure which includes not for profit entities.

(3) "Streetcar" includes, but is not limited to, a rail transit vehicle, including a modern, antique, or reproduction vehicle, that is designed to fit the scale and traffic patterns of the neighborhoods through which it travels and operates at lower speeds generally in existing rights of way through mixed traffic, with frequent stops.

(b) The authority shall establish and implement a five-year grant program to provide assistance to local governmental authorities as well as a public-private project initiative for the capital, technical, and start-up costs of development and expansion of streetcar transportation and attendant economic and community development opportunities. The five-year grant program shall begin when funding becomes available for such purposes. The five-year grant program may be renewed at the end of each five-year period, consistent with the provisions of this Code section.

(c) The authority will work closely with the formation of a pilot program and will provide a state-level flow through point for any available federal funding or other forms of financial and development sources and assistance for local, regional, and public-private streetcar projects.

(d) The authority shall consider the following factors in its selection of projects that will be implemented by this pilot program:

(1) The project is ripe for development, construction, and operation;

- (2) The project application demonstrates strong local and private sector financial participation in the project;
 - (3) The project will foster redevelopment opportunities adjacent to the streetcar line for which assistance is being sought;
 - (4) The project includes the financial participation of the private owners of real property abutting the streetcar line, with the exception of owner occupied residential properties, for some of the capital costs of the project;
 - (5) The project application demonstrates that development or redevelopment agreements are in place with respect to the project and land planning policies complimentary to the project have been adopted for land in close proximity to the streetcar line, including the availability of property zoned to accommodate mixed use development adjacent to the streetcar line;
 - (6) The project application demonstrates either how redeveloping or new neighborhoods on vacant or underutilized land will be connected by the project to each other or to major attractors in the central city where the project will be carried out or how circulator or connector lines under the project will connect developed neighborhoods with one another or with the business district in the central city;
 - (7) The project has demonstrated desirable levels of local financial and linking resources commitment; and
 - (8) The project may include, and is encouraged to include, a public-private project initiative and organizational structure or sponsor.
- (e) The authority will coordinate with all appropriate metropolitan, regional, and municipal planning and development agencies where projects may be pursued and will coordinate with the Georgia Regional Transportation Authority and appropriate local transit agencies in the development, funding, and implementation of various streetcar projects.
- (f) In order to receive grant assistance under this Code section, a sponsor of a project must submit to the authority an application that includes a detailed operating plan for the streetcar line for which such assistance is being sought, including the frequency of service, hours of operation, stop locations, and demonstration of the financial capacity of the sponsor to operate the streetcar line.
- (g) A project for which grant assistance may be provided under this Code section may include streetscaping, signalization modifications, and other modifications to the road system or other public rights of way

on which the project is to be carried out; acquisition of streetcars; and project construction, design, and engineering. (Code 1981, § 32-10-76, enacted by Ga. L. 2006, p. 498, § 2/SB 150.)

Editor's notes. — Ga. L. 2006, p. 498, § 1/SB 150, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Georgia Community Streetcar Development and Revitalization Act.'"

32-10-77. General Assembly approval of funding.

No funding by issuing bonds, any other state funds, or federal funds administered by the Department of Transportation shall be allowed for streetcar projects by any state entity or authority, including, but not limited to, the Department of Transportation or the State Road and Tollway Authority, or any other subsidiary of the state, without specific prior approval by passage of a general Act by the General Assembly. (Code 1981, § 32-10-77, enacted by Ga. L. 2006, p. 498, § 3/SB 150.)

Editor's notes. — Ga. L. 2006, p. 498, § 1/SB 150, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Georgia Community Streetcar Development and Revitalization Act.'"

PART 2

REVENUE BONDS

32-10-90. Power of authority to issue bonds generally; pledging of tolls and other project revenues for payment of principal and interest of bonds; attributes of bonds generally.

The authority shall have the power and is authorized, at one time or from time to time, to provide by resolution for the issuance of negotiable revenue bonds of the authority for the purpose of paying all or any part of the cost, as defined in paragraph (4) of Code Section 32-10-60, of any one or a combination of projects. The principal and interest of such revenue bonds shall be payable from and may be secured by a pledge of tolls and other revenues of all or any part of the project financed in whole or in part with the proceeds of such issue or with the proceeds of bonds refunded or to be refunded by such issue or by a pledge of any other revenues of the authority that are legally available for such purpose. The bonds of each issue shall be dated, shall bear interest as provided for in Code Section 32-10-91, shall mature not later than 40 years from the date of issue, shall be payable in such media of payments as to both principal and interest as may be determined by the authority, and may be made redeemable before maturity, at the option of the authority, at such price or prices and under such terms and conditions as may be fixed by the authority in the resolution providing for the

issuance of the bonds. (Ga. L. 1953, Jan.-Feb. Sess., p. 302, § 12; Ga. L. 1972, p. 179, § 19; Code 1933, § 95A-1249, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 2001, p. 1251, § 1-12.)

Cross references. — Revenue bonds generally, § 36-82-60 et seq.

32-10-90.1. Garvee bond provisions.

(a) As used in this Code section, the term “grant anticipation revenue vehicle” or “garvee bond” means any bond issued by the authority which is an eligible debt financing instrument within the scope of 23 U.S.C. Section 122 or which is otherwise to be repaid or reimbursed in whole or in part, directly or indirectly, from federal funds.

(b) With respect to garvee bonds and projects financed by garvee bonds, the provisions and limitations of this Code section shall control over any other conflicting provisions of this article, it being the intention of the General Assembly that grant anticipation revenue vehicles and projects funded thereby be fully subject to the terms expressed in this Code section.

(c) For the purpose of issuance and use of the proceeds of garvee bonds, the authority and the department shall give priority, as far as reasonably practicable in the judgment of the department, to the completion of those portions of the Developmental Highway System as set out in paragraphs (1) through (13) and paragraphs (15) and (16) of subsection (a) of Code Section 32-4-22 and such further paragraphs as may be added to such subsection from time to time, with due regard to the timely and economical completion of the portion set out in paragraph (14) thereof.

(d) Any project the cost of which is paid from the proceeds of garvee bonds shall be, pursuant to a contract or agreement between the authority and the department, planned, designed, and constructed by the Department of Transportation or a contractor contracting with the Department of Transportation.

(e) If during any state fiscal year the amount of federal reimbursement available to the State of Georgia under 23 U.S.C. Section 122 is or will be reduced below 90 percent of the amount available during Fiscal Year 2000-2001, the authority shall not thereafter issue any garvee bond.

(f) If cost effective as determined by the authority, garvee bonds shall be insured. (Code 1981, § 32-10-90.1, enacted by Ga. L. 2001, p. 1251, § 1-12.1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2001, a comma was inserted following “garvee bonds” in subsection (c).

U.S. Code. — Payments to states for bond and other debt instrument financing, 23 U.S.C. § 122.

JUDICIAL DECISIONS

Cited in *Campbell v. State Rd. & Tollway Auth.*, 276 Ga. 714, 583 S.E.2d 32 (2003).

32-10-91. Obtaining of loans and issuance and sale of notes and bonds; sale of obligations.

The authority may authorize by resolution the following: the obtaining of loans; the issuance and sale of notes; and the issuance and sale of bonds. The foregoing obligations may be offered at public or private sale in such manner and for such interest rate and at such price as the authority may determine to be in the best interests of the authority and the state, provided that any offering is subject to the review and approval of the Georgia State Financing and Investment Commission pursuant to the provisions of Article 2 of Chapter 17 of Title 50. (Ga. L. 1953, Jan.-Feb. Sess., p. 302, § 13; Code 1933, § 95A-1250, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1989, p. 489, § 1.)

32-10-92. Bonds authorized by resolution; specification of terms; public or private sale.

Bonds issued by the authority shall be authorized by resolution of the authority, be in such denominations, bear such date or dates, and mature at such time or times within 40 years from the issuance thereof as the authority determines to be appropriate. Such bonds shall be subject to such terms of redemption, bear interest at such rate or rates payable at such times, be in registered form or book-entry form through a securities depository, or both, as to principal or interest or both principal and interest, carry such registration privileges, be executed in such manner, be payable in such medium of payment at such place or places, and be subject to such terms and conditions as such resolution of the authority may provide; provided, however, in lieu of specifying the rate or rates of interest which the bonds to be issued by an authority are to bear, the resolution of the authority may provide that the bonds when issued will bear interest at a rate not exceeding a maximum per annum rate of interest which may be fixed or may fluctuate or otherwise change from time to time as specified in the resolution or may state that, in the event the bonds are to bear different rates of interest for different maturity dates, none of such rates will exceed the maximum rate, which rate may be fixed or may fluctuate or otherwise change from time to time, as specified. Bonds may be sold at public or

private sale for such price or prices as the authority shall determine. (Ga. L. 1953, Jan.-Feb. Sess., p. 302, § 14; Code 1933, § 95A-1251, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1985, p. 149, § 32; Ga. L. 2001, p. 1251, § 1-13.)

32-10-93. Execution, seal, and signing of bonds.

All bonds issued by the authority shall be executed in the name of the authority by the chairperson and secretary of the authority and shall be sealed with the official seal of the authority or a facsimile thereof. The facsimile signatures of the chairperson and secretary of the authority may be imprinted thereon in lieu of the manual signatures of such officers if the authority so directs in the resolution authorizing such bonds or otherwise. In case any officer whose manual or facsimile signature shall appear on any bonds shall cease to be such officer before the delivery of such bonds, such signature shall nevertheless be valid and sufficient for all purposes the same as if he or she had remained in office until such delivery. (Ga. L. 1953, Jan.-Feb. Sess., p. 302, § 15; Code 1933, § 95A-1252, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 2001, p. 1251, § 1-13.1.)

32-10-94. Status of bonds as negotiable instruments; tax exemption for bonds, their transfer, and income therefrom.

All revenue bonds issued under this article shall have and are declared to have all the qualities and incidents of negotiable instruments under the negotiable instruments law of the state. Such bonds, their transfer, and the income therefrom shall be exempt from all taxation in this state. (Ga. L. 1953, Jan.-Feb. Sess., p. 302, § 16; Code 1933, § 95A-1253, enacted by Ga. L. 1973, p. 947, § 1.)

32-10-95. Utilization of bond proceeds; procedure in cases where proceeds are less than or greater than cost of project or combined projects.

The proceeds of the bonds shall be used solely for the payment of the cost of the project or combined projects and shall be disbursed upon requisition or order of the chairman of the authority or its duly bonded agents under such restrictions, if any, as the resolution authorizing the issuance of the bonds or the trust indenture may provide. If the proceeds of such bonds, by error of calculation or otherwise, shall be less than the cost of the project or combined projects, unless otherwise provided in the resolution authorizing the issuance of the bonds or in the trust indenture, additional bonds may in like manner be issued to provide the amount of such deficit, which bonds, unless otherwise provided in the resolution authorizing the issuance of the bonds or in

the trust indenture, shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds first issued for the same purpose. If the proceeds of the bonds of any issue shall exceed the amount required for the purpose for which such bonds are issued, all surplus shall be paid into the sinking fund provided for the payment of principal and interest of such bonds. (Ga. L. 1953, Jan.-Feb. Sess., p. 302, § 17; Code 1933, § 95A-1254, enacted by Ga. L. 1973, p. 947, § 1.)

32-10-96. Issuance of interim receipts, interim certificates, and temporary bonds.

Prior to the preparation of definitive bonds, the authority may, under like restrictions, issue interim receipts, interim certificates, or temporary bonds, with or without coupons exchangeable for definitive bonds upon the issuance of the latter. (Ga. L. 1953, Jan.-Feb. Sess., p. 302, § 18; Code 1933, § 95A-1255, enacted by Ga. L. 1973, p. 947, § 1.)

32-10-97. Replacement of lost or mutilated bonds.

The authority may also provide for the replacement of any bond which becomes mutilated or which is destroyed or lost. (Ga. L. 1953, Jan.-Feb. Sess., p. 302, § 19; Code 1933, § 95A-1256, enacted by Ga. L. 1973, p. 947, § 1.)

RESEARCH REFERENCES

ALR. — Construction and effect of statutes in relation to duplication of lost or destroyed securities issued by state or other public body, 63 ALR 388.

32-10-98. Conditions precedent to taking effect of resolutions for bond issuance; issuance of bonds of a single issue for purpose of paying cost of one or more projects.

Resolutions for the issuance of revenue bonds may be adopted without any other proceedings or the happening of any other conditions or things than those proceedings, conditions, and things which are specified or required by this article. In the discretion of the authority, revenue bonds of a single issue may be issued for the purpose of paying the cost of any one or more, including a combination of, projects at any one location or any number of locations. Any resolution providing for the issuance of revenue bonds under this article shall become effective immediately upon its passage and need not be published or posted; and any such resolution may be passed at any regular or special or adjourned meeting of the authority by a majority of its members. (Ga. L. 1953, Jan.-Feb. Sess., p. 302, § 20; Code 1933, § 95A-1257, enacted by Ga. L. 1973, p. 947, § 1.)

32-10-99. Credit of state not pledged.

Revenue bonds issued under this article shall not be deemed to constitute a debt of the State of Georgia or a pledge of the faith and credit of the state, but such bonds shall be payable from the revenues and funds of the authority as provided for in the resolutions or trust indentures authorizing or securing such bond issues; and the issuance of such revenue bonds shall not directly, indirectly, or contingently obligate the state to levy or to pledge any form of taxation whatsoever therefor or to make any appropriation for the payment thereof; and all such bonds shall contain recitals on their face covering substantially the foregoing provisions of this Code section. (Ga. L. 1953, Jan.-Feb. Sess., p. 302, § 21; Code 1933, § 95A-1258, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1991, p. 94, § 32; Ga. L. 2001, p. 1251, § 1-13.2.)

32-10-100. Trust indenture as security for bonds.

(a) In the discretion of the authority, any issue of such revenue bonds may be secured by a trust indenture by and between the authority and a corporate trustee, which may be any trust company or bank having the powers of a trust company, inside or outside of the state. Such trust indenture may pledge or assign tolls, revenues, and earnings to be received by the authority.

(b) Either the resolution providing for the issuance of revenue bonds or such trust indenture may contain provisions for protecting and enforcing the rights and remedies of the bondholder, including the right of the appointment of a receiver upon default in the payment of any principal or interest obligation and the right of any receiver or indenture trustee to enforce collection of tolls, revenues, or other charges for the use of the project or projects, necessary to pay all costs of operation, all reserves provided for, the principal and interest on all bonds in the given issue, all cost of collection, and all other costs reasonably necessary to accomplish the collection of such sums, in the event of any default by the authority.

(c) Such resolution or trust indenture may include covenants setting forth the duties of the authority in relation to the acquisition of property; the construction of the project; the custody, safeguarding, and application of all moneys; and the operation and maintenance of the project or projects; and may also provide that any project shall be constructed and paid for under the supervision of department engineers or others satisfactory to the original purchasers of the bonds issued for such project or projects. Such resolution or trust indenture may also require that the security given by contractors and by any depository of the proceeds of the bonds or revenues or other moneys be satisfactory to such purchasers and may also contain provisions concerning the conditions, if any, upon which additional revenue bonds may be issued.

(d) It shall be lawful for any bank or trust company incorporated under the laws of this state to act as such depository and to furnish such indemnifying bonds or pledge such securities as may be required by the authority. Such indenture may set forth the rights and remedies of the bondholders and of the trustee and may restrict the individual right of action of bondholders as is customary in trust indentures securing bonds and debentures of corporations.

(e) In addition to the foregoing, such trust indenture may contain such other provisions as the authority may deem reasonable and proper for the security of the bondholders. All expenses incurred in carrying out such trust indenture may be treated as a part of the cost of maintenance, operation, and repair of the project affected by such indenture. (Ga. L. 1953, Jan.-Feb. Sess., p. 302, § 22; Ga. L. 1972, p. 179, § 20; Code 1933, § 95A-1259, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1985, p. 149, § 32.)

32-10-101. Payment of bond proceeds to trustee.

The authority shall, in the resolution providing for issuance of revenue bonds or in the trust indenture, provide for the payment of the proceeds of the sale of the bonds to any officer or person who or any agency, bank, or trust company which shall act as trustee of such funds and shall hold and apply such funds as provided in this article, subject to such regulations as this article and such resolution or trust indenture may provide. (Ga. L. 1953, Jan.-Feb. Sess., p. 302, § 23; Code 1933, § 95A-1260, enacted by Ga. L. 1973, p. 947, § 1.)

32-10-102. Pledges of revenues, tolls, and earnings; creation and disposition of sinking funds.

(a) The revenues, tolls, and earnings derived from any particular project or projects and all or any part of the revenues, tolls, and earnings received by the authority, regardless of whether or not such tolls, earnings, and revenues were produced by a particular project for which bonds have been issued, unless otherwise pledged or allocated, may be pledged by the authority to the payment of the principal and interest obligations of any revenue bond issues of the authority. All funds so pledged, from whatever source received, which may include funds received from one or more of all sources of the authority's income, shall be set aside at regular intervals, as may be provided in the resolutions or trust indentures, into sinking funds which shall be pledged to and charged with the payment of (1) the interest upon such revenue bonds as such interest shall fall due, (2) the principal of the bonds as the same shall mature, (3) the necessary charges of paying agents for paying principal and interest, and (4) any premium required

upon bonds retired by call or purchase as may be provided in the resolutions or trust indentures.

(b) The use and disposition of such sinking funds shall be subject to such regulations as may be provided in the resolutions authorizing the issuance of the revenue bonds or in the trust indentures; but, except as may otherwise be provided in such resolutions or trust indentures, such sinking funds, individually, shall be funds for the benefit of all revenue bonds of the given issue for which they are created without distinction or priority of one over another. Subject to the resolution or trust indenture of any given bond issue, any moneys in such sinking funds, after all bonds and the interest thereon for which such sinking funds were pledged have been paid, may be paid into the authority fund provided for in Code Section 32-10-72. (Ga. L. 1953, Jan.-Feb. Sess., p. 302, § 24; Code 1933, § 95A-1261, enacted by Ga. L. 1973, p. 947, § 1.)

32-10-103. Rights and remedies of holders of bonds or interest coupons and of indenture trustees.

Any holders of revenue bonds issued under this article or any of the coupons appertaining thereto, any duly appointed receiver of such bonds or coupons, and any indenture trustee for bondholders, except to the extent the rights given in this Code section may be restricted by resolution passed before the issuance of the bonds or by the trust indenture, may, either at law or in equity, by action, mandamus, or other proceedings, protect and enforce any and all rights under the laws of Georgia or granted in this Code section or under such resolution or trust indentures and may enforce and compel performance of all duties required by this article or by such resolution or trust indenture to be performed by the authority or any officer thereof, including the fixing, charging, and collection of revenues, tolls, and other charges for the use of the project or projects. No holder of any such bond or receiver or indenture trustee thereof shall have the right to compel any exercise of the taxing power of the state to pay any such bond or the interest thereon or to enforce the payment thereof against any property of the state; nor shall any such bond constitute a charge, lien, or encumbrance, legal or equitable, upon any property of the state. (Ga. L. 1953, Jan.-Feb. Sess., p. 302, § 25; Code 1933, § 95A-1262, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1982, p. 3, § 32.)

32-10-104. Refunding bonds.

The authority is authorized, subject to any prior resolution or trust indenture, to provide by resolution for the issuance of revenue refunding bonds of the authority for the purpose of refunding any revenue bonds issued under this article and then outstanding, together with

accrued interest thereon. The issuance of such revenue refunding bonds, the maturities and all other details thereof, the rights of the holders thereof, and the duties of the authority in respect to the same shall be governed by this article insofar as the same may be applicable. (Ga. L. 1953, Jan.-Feb. Sess., p. 302, § 26; Code 1933, § 95A-1263, enacted by Ga. L. 1973, p. 947, § 1.)

RESEARCH REFERENCES

ALR. — Power of municipal corporation to refund special assessment bonds, 102 ALR 202.

Power of municipality or other governmental body to issue refunding bonds to retire obligation in respect of which the creation and maintenance of a sinking

fund by taxation is required by constitutional or statutory provision, 157 ALR 794.

Power of governmental unit to issue bonds as implying power to refund them, 1 ALR2d 134.

32-10-105. Investment of funds in bonds; deposit of bonds as securities.

The bonds authorized in paragraph (8) of Code Section 32-10-63 and in Code Section 32-10-90 are deemed securities in which (1) all public officers and bodies of this state and all municipalities and all municipal subdivisions, (2) all insurance companies and associations and other persons carrying on an insurance business, (3) all banks, bankers, trust companies, savings banks and savings associations, including savings and loan associations, building and loan associations, investment companies, and other persons carrying on a banking business, (4) all administrators, guardians, executors, trustees, and other fiduciaries, and (5) all other persons whatsoever who are now or may hereafter be authorized to invest in bonds or other obligations of the state may properly and legally invest funds, including capital in their control or belonging to them. The bonds are also deemed securities which may be deposited with and shall be received by all public officers and bodies of this state and all municipalities and municipal subdivisions for any purpose for which the deposit of the bonds or other obligations of this state is now or may hereafter be authorized. (Ga. L. 1953, Jan.-Feb. Sess., p. 302, § 27; Code 1933, § 95A-1264, enacted by Ga. L. 1973, p. 947, § 1.)

32-10-106. Protection of interests and rights of bondholders.

While any of the bonds issued by the authority remain outstanding, the powers, duties, or existence of the authority or of its officers, employees, or agents shall not be diminished or impaired in any manner that will affect adversely the interests and rights of the holders of such bonds. (Ga. L. 1953, Jan.-Feb. Sess., p. 302, § 31; Ga. L. 1972,

p. 179, § 21; Code 1933, § 95A-1268, enacted by Ga. L. 1973, p. 947, § 1.)

32-10-107. Confirmation and validation of bonds.

Bonds of the authority shall be confirmed and validated in accordance with Article 3 of Chapter 82 of Title 36, the "Revenue Bond Law." The bonds, when validated, and the judgment of validation shall be final and conclusive with respect to such bonds and against the authority issuing the same. (Ga. L. 1953, Jan.-Feb. Sess., p. 302, § 30; Code 1933, § 95A-1267, enacted by Ga. L. 1973, p. 947, § 1.)

32-10-108. Transfer of projects to state highway system free from tolls.

Upon payment in full of all bonds and the interest thereon and obligations of every nature whatsoever for the payment of which the revenues of any given project or projects have been pledged, in whole or in part, either originally or subsequently, either primarily or secondarily, directly or indirectly or otherwise, or upon the setting aside in trust, for the benefit of bondholders or other obligees, of a sufficient amount for the payment of all such bonds and other obligations and the interest thereon to the maturity thereof, such project or projects, if deemed by the department to be in a safe and satisfactory condition of repair and traffic capacity, may become part of the state highway system and thereafter shall be maintained by the department free of tolls. In the event such project or projects to be transferred are not in good condition, in the judgment of the department, the department shall be charged with the duty of immediately advising the authority in writing what will be necessary to accomplish such safe and satisfactory condition of repair and traffic capacity; and the authority thereafter shall apply sufficient revenue from such project or projects to the accomplishment of such safe condition of repair and traffic capacity; and, upon its accomplishment, such project or projects shall become toll free as provided in this Code section. Upon the fulfillment of all conditions necessary to the cessation of tolls upon any such project, the authority shall convey by deed all right, title, and interest in and to such project to the department for and in consideration of \$1.00, which the treasurer of the department is authorized to pay from any department funds available to him for any department expenditure. (Ga. L. 1953, Jan.-Feb. Sess., p. 302, § 9; Ga. L. 1972, p. 179, § 16; Code 1933, § 95A-1246, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 2001, p. 1251, § 1-14.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2001, “Upon payment in full” was substituted for “Upon payment if full” at the beginning of the Code section.

32-10-109. Covenant with holders as to tax-exempt status of authority property and bonds.

It is found, determined, and declared that the creation of the authority and the carrying out of its corporate purpose are in all respects for the benefit of the people of this state and that the authority is an institution of purely public charity and will be performing an essential governmental function in the exercise of the power conferred upon it by this article; and this state covenants with the holders of the bonds that the authority shall not be required to pay any taxes or assessments upon any of the property acquired or leased by it or under its jurisdiction, control, possession, or supervision or upon its activities in the operation or maintenance of the projects erected by it or upon any fees, tolls, or other charges for the use of such projects or upon other income received by the authority. The bonds of the authority, their transfer, and the income therefrom shall at all times be exempt from taxation within this state. (Ga. L. 1953, Jan.-Feb. Sess., p. 302, § 28; Code 1933, § 95A-1265, enacted by Ga. L. 1973, p. 947, § 1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1991, “are” was substituted for “is” near the beginning of this Code section.

32-10-110. Venue and jurisdiction of actions.

Any action to protect or enforce any rights under this article and any action pertaining to validation of any bonds issued under this article brought in the courts of this state shall be brought in the Superior Court of Fulton County, which shall have exclusive original jurisdiction of such actions. (Ga. L. 1953, Jan.-Feb. Sess., p. 302, § 29; Code 1933, § 95A-1266, enacted by Ga. L. 1973, p. 947, § 1.)

JUDICIAL DECISIONS

Cited in M.A.R.T.A. v. McCain, 135 Ga. App. 460, 218 S.E.2d 122 (1975).

PART 3

TRANSPORTATION INFRASTRUCTURE BANK

32-10-120. Short title.

This part shall be known and may be cited as the “Georgia Transportation Infrastructure Bank Act.” (Code 1981, § 32-10-120, enacted by Ga. L. 2008, p. 73, § 2/HB 1019.)

32-10-121. Creation; governance; corporate purpose; types of accounts.

(a) There shall be created within the State Road and Tollway Authority an instrumentality of the state to be known as the Georgia Transportation Infrastructure Bank.

(b) The bank shall be governed by the board of the State Road and Tollway Authority as provided in this chapter.

(c) The corporate purpose of the bank is to assist in financing qualified projects by providing loans and other financial assistance to government units for constructing and improving highway and transportation facilities necessary for public purposes, including economic development. The exercise by the bank of a power conferred in this part is an essential public function.

(d) The bank shall establish and maintain at least the four following accounts in the authority fund:

- (1) State and local roadway account;
- (2) State and local nonroadway account;
- (3) Federal roadway account; and

(4) Federal nonroadway account. (Code 1981, § 32-10-121, enacted by Ga. L. 2008, p. 73, § 2/HB 1019.)

32-10-122. Definitions.

As used in this part, the term:

- (1) “Bank” means the Georgia Transportation Infrastructure Bank.
- (2) “Board” means the board of the State Road and Tollway Authority.
- (3) “Department of Transportation” means the Georgia Department of Transportation and its successors.

(4) "Eligible costs" means, as applied to a qualified project to be financed from the federal roadway account, the costs that are permitted under applicable federal laws, requirements, procedures, and guidelines in regard to establishing, operating, and providing assistance from the bank. As applied to a qualified project to be financed from the state and local roadway account, these costs include the costs of preliminary engineering, traffic and revenue studies, environmental studies, right of way acquisition, legal and financial services associated with the development of the qualified project, construction, construction management, facilities, and other costs necessary for the qualified project. As applied to any qualified project to be financed from the federal nonroadway account, these costs include the costs of preliminary engineering, traffic and revenue studies, environmental studies, right of way acquisition, legal and financial services associated with the development of the qualified project, construction, construction management, equipment, facilities, and other nonoperating costs necessary for the qualified project. As applied to any qualified project to be financed from the state and local nonroadway account, these costs include the costs of preliminary engineering, traffic and revenue studies, environmental studies, right of way acquisition, legal and financial services associated with the development of the qualified project, construction, construction management, equipment, facilities, and other nonoperating costs necessary for the qualified project.

(5) "Eligible project" means a highway, including bridges, air transport and airport facilities, and rail, or transit or bicycle facility project which provides public benefits by either enhancing mobility and safety, promoting economic development, or increasing the quality of life and general welfare of the public. The term "eligible project" also includes mass transit systems including, but not limited to, monorail and monobeam mass transit systems. There may be included as part of any such project all improvements necessary to the full utilization thereof, including site preparation, roads and streets, sidewalks, water supply, outdoor lighting, belt line railroad sidings and lead tracks, bridges, causeways, terminals for railroad, automotive, and air transportation, transportation facilities incidental to the project, and the dredging and improving of harbors and waterways, none of which foregoing descriptive words shall be construed to constitute a limitation.

(6) "Federal accounts" means, collectively, the separate accounts for federal roadway funds and federal nonroadway funds.

(7) "Financing agreement" means any agreement entered into between the bank and a qualified borrower pertaining to a loan or other financial assistance. This agreement may contain, in addition

to financial terms, provisions relating to the regulation and supervision of a qualified project, or other provisions as the board may determine. The term "financing agreement" includes, without limitation, a loan agreement, trust indenture, security agreement, reimbursement agreement, guarantee agreement, bond or note, ordinance or resolution, or similar instrument.

(8) "Government unit" means a municipal corporation, county, community improvement district, or any public operator of transit, including combinations of two or more of these entities, acting jointly to construct, own, or operate a qualified project, or any other state authority, board, commission, agency, or department which may construct, own, or operate a qualified project.

(9) "Loan" means an obligation subject to repayment which is provided by the bank to a qualified borrower for all or a part of the eligible costs of a qualified project. A loan may be disbursed in anticipation of reimbursement for or direct payment of the eligible costs of a qualified project.

(10) "Loan obligation" means a bond, note, or other evidence of an obligation issued by a qualified borrower.

(11) "Other financial assistance" includes, but shall not be limited to, grants, contributions, credit enhancement, capital or debt reserves for bonds or debt instrument financing, interest rate subsidies, provision of letters of credit and credit instruments, provision of bond or other debt financing instrument security, and other lawful forms of financing and methods of leveraging funds that are approved by the board, and, in the case of federal funds, as allowed by federal law.

(12) "Project revenues" or "revenues" means all rates, rents, fees, assessments, charges, and other receipts derived or to be derived by a qualified borrower from a qualified project or made available from a special source, and, as provided in the applicable financing agreement, derived from any system of which the qualified project is a part or from any other revenue producing facility under the ownership or control of the qualified borrower including, without limitation, proceeds of grants, gifts, appropriations and loans, including the proceeds of loans made by the bank, investment earnings, reserves for capital and current expenses, proceeds of insurance or condemnation and proceeds from the sale or other disposition of property and from any other special source as may be provided by the qualified borrower.

(13) "Qualified borrower" means any government unit authorized to construct, operate, or own a qualified project.

(14) "Qualified project" means an eligible project which has been selected by the bank to receive a loan or other financial assistance from the bank to defray an eligible cost.

(15) “State and local accounts” means, collectively, the separate accounts for state and local roadway funds and state and local nonroadway funds. (Code 1981, § 32-10-122, enacted by Ga. L. 2008, p. 73, § 2/HB 1019.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2008, in paragraphs (6) and (15), “accounts” was substituted for “account”, and, in paragraph (11), a comma was inserted following “the board, and” near the end.

32-10-123. Authority of the board.

In administering the affairs of the bank, the board may exercise any or all of the powers granted to the authority under Parts 1 and 2 of this article, as well as the powers granted in this part. Without limiting the generality of the foregoing, the board is specifically authorized to issue bonds for the purposes of the bank, in the same general manner provided in Part 2 of this article. (Code 1981, § 32-10-123, enacted by Ga. L. 2008, p. 73, § 2/HB 1019.)

32-10-124. Power of board; meaning of use of word “bank” for purposes of this article.

(a) In addition to the powers contained elsewhere in this article, the board has all power necessary, useful, or appropriate to fund, operate, and administer the bank, and to perform its other functions including, but not limited to, the power to:

(1) Have perpetual succession;

(2) Adopt, promulgate, amend, and repeal bylaws, not inconsistent with provisions in this part for the administration of the bank’s affairs and the implementation of its functions, including the right of the board to select qualifying projects and to provide loans and other financial assistance;

(3) Sue and be sued in the name of the bank;

(4) Have a seal and alter it at its pleasure, although the failure to affix the seal does not affect the validity of an instrument executed on behalf of the bank;

(5) Make loans to qualified borrowers to finance the eligible costs of qualified projects and to acquire, hold, and sell loan obligations at prices and in a manner as the board determines advisable;

(6) Provide qualified borrowers with other financial assistance necessary to defray eligible costs of a qualified project;

(7) Enter into contracts, arrangements, and agreements with qualified borrowers and other persons and execute and deliver all

financing agreements and other instruments necessary or convenient to the exercise of the powers granted in this part;

(8) Enter into agreements with a department, agency, or instrumentality of the United States or of this state or another state for the purpose of providing for the financing of qualified projects;

(9) Establish:

(A) Policies and procedures for the making and administering of loans and other financial assistance; and

(B) Fiscal controls and accounting procedures to ensure proper accounting and reporting by the bank and government units;

(10) Acquire by purchase, lease, donation, or other lawful means and sell, convey, pledge, lease, exchange, transfer, and dispose of all or any part of its properties and assets of every kind and character or any interest in it to further the public purpose of the bank;

(11) Procure insurance, guarantees, letters of credit, and other forms of collateral or security or credit support from any public or private entity or instrumentality of the United States for the payment of any bonds issued by it, including the power to pay premiums or fees on any insurance, guarantees, letters of credit, and other forms of collateral or security or credit support;

(12) Collect or authorize the trustee under any trust indenture securing any bonds to collect amounts due under any loan obligations owned by it, including taking the action required to obtain payment of any sums in default;

(13) Unless restricted under any agreement with holders of bonds, consent to any modification with respect to the rate of interest, time, and payment of any installment of principal or interest, or any other term of any loan obligations owned by it;

(14) Borrow money through the issuance of bonds and other forms of indebtedness as provided in this article;

(15) Expend funds to obtain accounting, management, legal, financial consulting, and other professional services necessary to the operations of the bank;

(16) Expend funds credited to the bank as the board determines necessary for the costs of administering the operations of the bank;

(17) Establish advisory committees as the board determines appropriate, which may include individuals from the private sector with banking and financial expertise, including the requirement that the bank shall consult with the Department of Transportation for the

purpose of implementing the project accounting procedures required by subparagraph (B) of paragraph (9) of this subsection;

(18) Procure insurance against losses in connection with its property, assets, or activities including insurance against liability for its acts or the acts of its employees or agents or to establish cash reserves to enable it to act as a self-insurer against any and all such losses;

(19) Collect fees and charges in connection with its loans or other financial assistance;

(20) Apply for, receive, and accept from any source, aid, grants, or contributions of money, property, labor, or other things of value to be used to carry out the purposes of this part subject to the conditions upon which the aid, grants, or contributions are made;

(21) Enter into contracts or agreements for the servicing and processing of financial agreements;

(22) Accept and hold, with or without payment of interest, funds deposited with the bank by government units and private entities; and

(23) Do all other things necessary or convenient to exercise powers granted or reasonably implied by this part.

(b) The bank shall not be authorized or empowered to be or to constitute a bank or trust company within the jurisdiction or under the control of this state or an agency of it or the Comptroller of the Currency or the Treasury Department of the United States, or a bank, banker, or dealer in securities within the meaning of, or subject to the provisions of, any securities, securities exchange, or securities dealers' law of the United States or of this state. The use of the word "bank" in the "Georgia Transportation Infrastructure Bank" is required by federal law. For the express purposes of this part, the use of the word "bank" in the "Georgia Transportation Infrastructure Bank Act" does not violate Code Section 7-1-243. In addition, all deposits taken by the Georgia Transportation Infrastructure Bank shall contain a notice stating that the deposits are not insured by the Federal Deposit Insurance Corporation. (Code 1981, § 32-10-124, enacted by Ga. L. 2008, p. 73, § 2/HB 1019; Ga. L. 2009, p. 8, § 32/SB 46.)

32-10-125. Revenue sources.

(a) The following sources may be used to capitalize the bank and for the bank to carry out its purposes:

(1) Appropriations by the General Assembly;

(2) Federal funds available to the state, as approved by the Department of Transportation;

(3) Contributions, donations, and deposits from government units, private entities, and any other source as may become available to the bank;

(4) All moneys paid or credited to the bank, by contract or otherwise, payments of principal and interest on loans or other financial assistance made from the bank, and interest earnings which may accrue from the investment or reinvestment of the bank's moneys;

(5) Proceeds from the issuance of bonds as provided in this part; and

(6) Other lawful sources not already dedicated for another purpose as determined appropriate by the board.

(b) Without limiting the provisions of subsection (a) of this Code section, it shall be specifically provided that any local government may use the proceeds of any local funds which may be hereafter made available by law for the purposes of this part, including without limitation the funding of eligible projects and contributions, donations, and deposits to the bank. (Code 1981, § 32-10-125, enacted by Ga. L. 2008, p. 73, § 2/HB 1019.)

32-10-126. Earnings; establishment of accounts and subaccounts; commingling of funds.

(a) Earnings on balances in the federal accounts must be credited and invested according to federal law. Earnings on state and local accounts must be credited to the state and local roadway account or state and local nonroadway account that generates the earnings. The bank may establish accounts and subaccounts within the state and local accounts and federal accounts as considered desirable to effectuate the purposes of this part, or to meet the requirements of any state or federal programs.

(b) For necessary and convenient administration of the bank, the board shall establish federal and state and local accounts and subaccounts within the bank necessary to meet any applicable federal law requirements or as the bank shall determine necessary or desirable in order to implement the provisions of this part.

(c) The bank shall comply with all applicable federal laws and regulations prohibiting the commingling of certain federal funds deposited in the bank. (Code 1981, § 32-10-126, enacted by Ga. L. 2008, p. 73, § 2/HB 1019.)

32-10-127. Loans and other financial assistance; determination of eligible projects.

(a) The bank may provide loans and other financial assistance to a government unit to pay for all or part of the eligible costs of a qualified project. The term of the loan or other financial assistance shall not exceed the useful life of the project. The bank may require the government unit to enter into a financing agreement in connection with its loan obligation or other financial assistance. The board shall determine the form and content of loan applications, financing agreements, and loan obligations including the term and rate or rates of interest on a financing agreement. The terms and conditions of a loan or other financial assistance from federal accounts shall comply with applicable federal requirements.

(b) The board shall determine which projects are eligible projects and then select from among the eligible projects qualified projects. Preference may be given to eligible projects which have local financial support. (Code 1981, § 32-10-127, enacted by Ga. L. 2008, p. 73, § 2/HB 1019.)

32-10-128. Authority of qualified borrowers.

(a) Qualified borrowers are authorized to obtain loans or other financial assistance from the bank through financing agreements. Qualified borrowers entering into financing agreements and issuing loan obligations to the bank may perform any acts, take any action, adopt any proceedings, and make and carry out any contracts or agreements with the bank as may be agreed to by the bank and any qualified borrower for the carrying out of the purposes contemplated by this part.

(b) In addition to the authorizations contained in this part, all other statutes or provisions permitting government units to borrow money and issue obligations, including, but not limited to Article 3 of Chapter 82 of Title 36, the "Revenue Bond Law," may be utilized by any government unit in obtaining a loan or other financial assistance from the bank to the extent determined necessary or useful by the government unit in connection with any financing agreement and the issuance, securing, or sale of loan obligations to the bank.

(c) A qualified borrower may receive, apply, pledge, assign, and grant security interests in project revenues to secure its obligations as provided in this part. A qualified borrower may fix, revise, charge, and collect fees, rates, rents, assessments, and other charges of general or special application for the operation or services of a qualified project, the system of which it is a part, and any other revenue producing

facilities from which the qualified borrower derives project revenues to meet its obligations under a financing agreement or to provide for the construction and improving of a qualified project. (Code 1981, § 32-10-128, enacted by Ga. L. 2008, p. 73, § 2/HB 1019.)

32-10-129. Bank exempted from taxes and assessments.

The bank is performing an essential governmental function in the exercise of the powers conferred upon it and shall not be required to pay taxes or assessments upon property or upon its operations or the income therefrom, or taxes or assessments upon property or loan obligations acquired or used by the bank or upon the income therefrom. (Code 1981, § 32-10-129, enacted by Ga. L. 2008, p. 73, § 2/HB 1019.)

32-10-130. Withholding of funds.

(a) If a government unit fails to collect and remit in full all amounts due to the bank on the date these amounts are due under the terms of any note or other obligation of the government unit, the bank shall notify the appropriate state officials who shall withhold all or a portion of the funds of the state and all funds administered by the state and its agencies, boards, and instrumentalities allotted or appropriated to the government unit and apply an amount necessary to the payment of the amount due.

(b) Nothing contained in this Code section mandates the withholding of funds allocated to a government unit which would violate contracts to which the state is a party, the requirements of federal law imposed on the state, or judgments of a court binding on the state. (Code 1981, § 32-10-130, enacted by Ga. L. 2008, p. 73, § 2/HB 1019.)

32-10-131. Liability of officer, employee, or committee of bank.

Neither the board nor any officer, employee, or committee of the bank acting on behalf of it, while acting within the scope of this authority, is subject to any liability resulting from carrying out any of the powers given in this part. (Code 1981, § 32-10-131, enacted by Ga. L. 2008, p. 73, § 2/HB 1019.)

32-10-132. Notice prior to action or referendum not required.

Notice, proceeding, or publication, except those required in this part, shall not be necessary to the performance of any act authorized in this part nor shall any act of the bank be subject to any referendum. (Code 1981, § 32-10-132, enacted by Ga. L. 2008, p. 73, § 2/HB 1019.)

32-10-133. Annual report.

Following the close of each state fiscal year, the bank shall submit an annual report of its activities for the preceding year to the Governor, the Lieutenant Governor, and the Speaker of the House of Representatives and make such report available to the General Assembly. The bank also shall submit an annual report to the appropriate federal agency in accordance with requirements of any federal program. (Code 1981, § 32-10-133, enacted by Ga. L. 2008, p. 73, § 2/HB 1019.)

CHAPTER 11

INTERSTATE RAIL PASSENGER NETWORK COMPACT

Sec.		Sec.	
32-11-1.	Ratification, enactment, and entry of compact.	32-11-5.	Creation of advisory council; membership.
32-11-2.	Policy.	32-11-6.	Duties of council.
32-11-3.	Economic impact study.	32-11-7.	Effective date.
32-11-4.	Assistance by participating states.	32-11-8.	Repeal.
		32-11-9.	Construction of compact.

32-11-1. Ratification, enactment, and entry of compact.

The interstate rail passenger network compact is ratified, enacted, and entered into by the State of Georgia with all other states joining the compact in the form substantially as this chapter. (Code 1981, § 32-11-1, enacted by Ga. L. 1993, p. 419, § 1.)

32-11-2. Policy.

It is the policy of the states party to this compact to cooperate and share the administrative and financial responsibilities concerning the planning of an interstate rail passenger network system connecting major cities in Illinois, Indiana, Kentucky, Tennessee, Georgia, and Florida. The participating states agree that a rail passenger system would provide a beneficial service and would be enhanced if operated across state lines. (Code 1981, § 32-11-2, enacted by Ga. L. 1993, p. 419, § 1.)

32-11-3. Economic impact study.

(a) The states of Illinois, Indiana, Kentucky, Tennessee, Georgia, and Florida (referred to in this chapter as "participating states") agree, upon adoption of this compact by the respective states, to jointly conduct and participate in a rail passenger network financial and economic impact study. The study must do the following:

(1) Carry forward research previously performed by the national railroad passenger corporation (Amtrak) (report issued December 1990) for purposes of evaluating a representative service schedule, train running times, and associated costs.

(2) Include consideration of the following:

(A) The purchase of railroad equipment by a participating state and the lease of the railroad equipment to Amtrak.

(B) The recommendation that a member of the council serve on the Amtrak board of directors.

(C) The periodic review of projected passenger traffic estimates.

(D) Any other matter related to the financial and economic impact of a rail passenger network between the cities of Chicago, Illinois, and Jacksonville, Florida.

(b) Information and data collected during the study under subsection (a) of this Code section that is requested by a participating state or a consulting firm representing a participating state or the compact may be made available to the state or firm. However, the information may not include matters not of public record or of a nature considered to be privileged and confidential unless the state providing the information agrees to waive the confidentiality. (Code 1981, § 32-11-3, enacted by Ga. L. 1993, p. 419, § 1.)

32-11-4. Assistance by participating states.

The participating states agree to do the following:

(1) Make available to each other and to a consulting firm representing a participating state or the compact assistance that is available, including personnel, equipment, office space, machinery, computers, engineering, and technical advice and services.

(2) Provide financial assistance for the implementation of the feasibility study that is available. (Code 1981, § 32-11-4, enacted by Ga. L. 1993, p. 419, § 1.)

32-11-5. Creation of advisory council; membership.

The interstate rail passenger advisory council (referred to in this compact as the “council”) is created. The membership of the council consists of three individuals from each participating state. The Governor, President of the Senate, and Speaker of the House of Representatives shall each appoint one member of the council. (Code 1981, § 32-11-5, enacted by Ga. L. 1993, p. 419, § 1.)

32-11-6. Duties of council.

The council shall do the following:

(1) Meet within 30 days after ratification of this agreement by at least two participating states.

(2) Establish rules for the conduct of the council’s business, including the payment of the reasonable and necessary travel expenses of council members.

(3) Coordinate all aspects of the rail passenger financial and economic impact study under Code Section 32-11-3.

(4) Contract with persons, including institutions of higher education, for performance of any part of the study under Code Section 32-11-3.

(5) Upon approval of the study, negotiate the proportionate share that each state will contribute toward the implementation and management of the proposed restoration of the interstate rail passenger system.

(6) Make recommendations to each participating state legislature concerning the results of the study required by this chapter. (Code 1981, § 32-11-6, enacted by Ga. L. 1993, p. 419, § 1.)

32-11-7. Effective date.

This compact becomes effective upon the adoption of the compact into law by at least two of the participating states. Thereafter, the compact becomes effective for another participating state upon the enactment of the compact by the state. (Code 1981, § 32-11-7, enacted by Ga. L. 1993, p. 419, § 1.)

32-11-8. Repeal.

This compact continues in force with respect to a participating state and remains binding upon the state until six months after the state has given notice to each other participating state of the repeal of this chapter. The withdrawal may not be construed to relieve a participating state from an obligation incurred before the end of the state's participation in the compact. (Code 1981, § 32-11-8, enacted by Ga. L. 1993, p. 419, § 1.)

32-11-9. Construction of compact.

(a) This compact shall be liberally construed to effectuate the compact's purposes.

(b) The provisions of this compact are severable. If:

(1) A phrase, clause, sentence, or provision of this compact is declared to be contrary to the Constitution of a participating state or of the United States; or

(2) The applicability of this compact to a government, an agency, a person, or a circumstance is held invalid,

the validity of the remainder of this compact and the compact's applicability to any government, agency, person, or circumstance is not affected.

(c) If this compact is held contrary to the Constitution of a participating state, the compact remains in effect for the remaining participating states and in effect for the state affected for all severable matters. (Code 1981, § 32-11-9, enacted by Ga. L. 1993, p. 419, § 1.)

CHAPTER 12

GEORGIA COORDINATING COMMITTEE FOR RURAL
AND HUMAN SERVICES TRANSPORTATION

Sec.		Sec.	
32-12-1.	Legislative findings.		Transportation; composition; chairperson; compensation.
32-12-2.	Creation.		
32-12-3.	Meetings; administrative expenses; compensation.	32-12-5.	Evaluation, analysis and review.
32-12-4.	State Advisory Subcommittee for Rural and Human Services	32-12-6.	Reports; recommendations.

Effective date. — This chapter became effective June 2, 2010.

Cross references. — Transit Governance Study Commission; creation; members; report; funds, § 50-32-5.

Editor's notes. — Ga. L. 2010, p. 778, § 1/HB 277, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Transportation Investment Act of 2010.'"

32-12-1. Legislative findings.

The General Assembly finds that there exist a number of programs designed to provide rural and human services transportation and that frequently these services are provided over large geographic areas through various funding sources which are frequently targeted to narrowly defined client bases. The sheer number of such programs lends itself to a need for coordination among the programs and agencies which implement them so as to best assist economies in purchasing equipment and operating these many programs, to better serve the taxpayers of the state in ensuring the most cost-effective delivery of these services, and to best serve the clients utilizing the transportation services provided through these programs. (Code 1981, § 32-12-1, enacted by Ga. L. 2010, p. 778, § 4/HB 277.)

Law reviews. — For annual survey of law on administrative law, see 62 Mercer L. Rev. 1 (2010).

32-12-2. Creation.

There is created the Georgia Coordinating Committee for Rural and Human Services Transportation of the Governor's Development Council. (Code 1981, § 32-12-2, enacted by Ga. L. 2010, p. 778, § 4/HB 277.)

32-12-3. Meetings; administrative expenses; compensation.

The Georgia Coordinating Committee for Rural and Human Services Transportation and its advisory subcommittees shall meet not less often than quarterly. Administrative expenses of the committee shall be borne by the Governor's Development Council. The members of the committee shall receive no extra compensation or reimbursement of expenses from the state for their services as members of the committee. (Code 1981, § 32-12-3, enacted by Ga. L. 2010, p. 778, § 4/HB 277.)

32-12-4. State Advisory Subcommittee for Rural and Human Services Transportation; composition; chairperson; compensation.

The Georgia Coordinating Committee for Rural and Human Services Transportation shall establish the State Advisory Subcommittee for Rural and Human Services Transportation which shall consist of the State School Superintendent and the commissioners of the Department of Transportation, Department of Human Services, Department of Behavioral Health and Developmental Disabilities, Department of Community Health, Department of Public Health, Department of Labor, the Governor's Development Council, and the Department of Community Affairs or their respective designees. The commissioner of transportation or his or her designee shall serve as chairperson of the State Advisory Subcommittee for Rural and Human Services Transportation. The Georgia Coordinating Committee for Rural and Human Services Transportation may also establish such additional advisory subcommittees as it deems appropriate to fulfill its mission which shall consist of a representative of each metropolitan planning organization and representatives from each regional commission in this state and may include other local government representatives; private and public sector transportation providers, both for profit and nonprofit; voluntary transportation programs representatives; public transit system representatives, both rural and urban; and representatives of the clients served by the various programs administered by the agencies represented on the State Advisory Subcommittee for Rural and Human Services Transportation. Members of advisory committees shall be responsible for their own expenses and shall receive no compensation or reimbursement of expenses from the Georgia Coordinating Committee for Rural and Human Services Transportation, the State Advisory Subcommittee for Rural and Human Services Transportation, or the state for their services as members of an advisory committee. (Code 1981, § 32-12-4, enacted by Ga. L. 2010, p. 778, § 4/HB 277; Ga. L. 2011, p. 705, § 5-19/HB 214.)

The 2011 amendment, effective July 1, 2011, inserted "Department of Public Health," in the first sentence of this Code section.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

32-12-5. Evaluation, analysis and review.

The Georgia Coordinating Committee for Rural and Human Services Transportation shall examine the manner in which transportation services are provided by the participating agencies represented on the committee. Such examination shall include but not be limited to:

(1) An analysis of all programs administered by participating agencies, including capital and operating costs, and overlapping or duplication of services among such programs, with emphasis on how to overcome such overlapping or duplication;

(2) The means by which transportation services are coordinated among state, local, and federal funding source programs;

(3) The means by which both capital and operating costs for transportation could be combined or shared among agencies, including at a minimum shared purchase of vehicles and maintenance of such vehicles;

(4) An analysis of those areas which might appropriately be consolidated to lower the costs of program delivery without sacrificing program quality to clients, including shared use of vehicles for client trips regardless of the funding source which pays for their trips;

(5) An analysis of state of the art efforts to coordinate rural and human services transportation elsewhere in the nation, including at a minimum route scheduling so as to avoid duplicative trips in a given locality;

(6) A review of any limitations which may be imposed by various federally funded programs and how the state can manage within those limitations as it reviews possible sharing opportunities;

(7) An analysis of how agency programs interact with and impact state, local, or regional transportation services performed on behalf of the general public through state, local, or regional transit systems;

(8) An evaluation of potential cost sharing opportunities available for clients served by committee agencies so as to maximize service delivery efficiencies and to obtain the maximum benefit on their behalf with the limited amount of funds available; and

(9) An analysis of possible methods to reduce costs, including, but not limited to, greater use of privatization. (Code 1981, § 32-12-5, enacted by Ga. L. 2010, p. 778, § 4/HB 277.)

32-12-6. Reports; recommendations.

No later than July 1 of each year, the Governor's Development Council shall submit the preliminary report of the Georgia Coordinating Committee for Rural and Human Services Transportation to the members of the State Advisory Subcommittee for Rural and Human Services Transportation. Comments and recommendations may be submitted to the Governor's Development Council for a period of 30 days. No later than September 1 of each year, the Governor's Development Council shall submit a final report to the Governor's Office of Planning and Budget for review and consideration. The report shall address each of the specific duties enumerated in Code Section 32-12-5 and such other subject areas within its purview as the Governor's Development Council shall deem appropriate. Each report shall focus on existing conditions in coordination of rural and human services transportation within the state and shall make specific recommendations for means to improve such current practices. Such recommendations shall address at a minimum both their cost implications and impact on client service. No later than January 15 of each year, the Governor's Office of Planning and Budget shall submit the final report of the Governor's Development Council and any affiliated budget recommendations to the presiding officers of the General Assembly, with copies of said report sent to the chairpersons of the transportation committees, the appropriations committees, and the health and human services committees of each chamber of the General Assembly. (Code 1981, § 32-12-6, enacted by Ga. L. 2010, p. 778, § 4/HB 277.)

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